



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

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शिमला, बुधवार 20 मार्च, 2013 / 29 फाल्गुन, 1934

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हिमाचल प्रदेश सरकार

**LABOUR AND EMPLOYMENT DEPARTMENT**

**NOTIFICATION**

*Shimla-2 , the 12<sup>th</sup> March, 2013*

**No. Sharm (A) 7-1/2005 (Award) Loose D/Shala.**—In exercise of the powers vested in her under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards announced by the Presiding Officer, Labour Court, Dharamshala of the following cases on the website of Labour & Employment Department:—

Sr. No.	Case No.	Title of the Case	Date of Award
1.	277/12	Smt./Shri Dinesh Kumar Vs factory manager	2-1-2013
2.	32/11	Sunita Devi Vs DFO Suket	4-1-2013
3.	504/09	Tirath Raj Vs President/Sec.Naina Devi Ji	4-1-2013
4.	118/11	Lachhi Devi Vs HPPWD Killer	4-1-2013
5.	191/10	Filen Dei Vs -do-	4-1-2013
6.	121/11	Tej Singh Vs -do-	4-1-2013
7.	370/12	Krishan Chand Vs EE HPPWD	5-1-2013
8.	372/12	Manoj Kumar Vs -do-	5-1-2013
9.	378/12	Milkhi Ram Vs -do-	5-1-2013
10.	383/12	Ghanshyam Vs -do-	5-1-2013
11.	369/12	Ruma Devi Vs -do-	5-1-2013
12.	313/12	Gopi Ram Vs DFO Kullu	8-1-2013
13.	204/12	Anil Singh Vs Director Kayakalp	14-1-2013
14.	235/10	Ravi Dass Vs DFO J/Naagr	14-1-2013
15.	7/11	Jobber Singh Vs MD HP State Forest	14-1-2013
16.	96/12	Charan Singh Vs EE I&PH Padhar	17-1-2013
17.	98/12	Jagdish Chand Vs -do-	17-1-2013
18.	102/12	Subhash Chand Vs -do-	17-1-2013
19.	104/12	Chatter Singh Vs -do-	17-1-2013
20.	134/12	Satish Kumar Vs -do-	17-1-2013
21.	156/12	Jageshwar Singh Vs -do-	17-1-2013
22.	165/12	Ganpat Ram Vs -do-	17-1-2013
23.	172/12	Biri Singh Vs -do-	17-1-2013
24.	174/12	Raju Ram Vs -do-	17-1-2013
25.	176/12	Kuntu Ram Vs -do-	17-1-2013
26.	183/12	Jati Ram Vs -do-	17-1-2013
27.	187/12	Surinder singh Vs -do-	17-1-2013
28.	191/12	Mohinder Kumar Vs -do-	17-1-2013
29.	101/10	Man Singh Vs Himachal dental College	17-1-2013
30.	10/11	Bhim Singh Vs EE HPSEB	17-1-2013
31.	115/11	Puran Chand Vs EE I&PH	17-1-2013
32.	85/10	Kanshi Ram Vs DM State Forest Corp.	17-1-2013
33.	128/11	Lal Singh Vs Sr. EE HPSEB	17-1-2013
34.	129/11	Shyam Singh Vs Sr. EE HPSEB	17-1-2013
35.	317/12	Ghampi Devi Vs HPPWD, J/nagar	19-1-2013
36.	214/0	Balak Ram Vs DFO Suket	19-1-2013
37.	220/10	Pamplu Ram Vs -do-	19-1-2013
38.	71/11	Kalan Devi Vs -do-	19-1-2013
39.	109/12	Om Parkesh Vs HPPWD J/Nagar	19-1-2013
40.	113/12	Om Prakesh Vs HPPWD J/Nagar	19-1-2013
41.	142/06	Narender Kumar Vs ACC Barmana	21-1-2013
42.	107/10	Jai Dev Vs Project Officer DRDA	21-1-2013

43.	117/11	Jarnail Singh Vs EE HPSEB	21-1-2013
44.	107/12	Ujjagar Singh Vs I&PH	24-1-2013
45.	17/11	Swaran Singh Vs MD HP Financial Corp.	24-1-2013

By order,  
Sd/-  
*Addl. Chief Secretary (Labour & Employment).*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT UNA)**

**Ref: No. : 277/2012**

Sh. Dinesh Kumar s/o Sh. Paras Ram, r/o Village, P.O. and Tehsil Haroli, Distt. Una, H.P.  
..Petitioner.

*Versus*

The Factory Manager, M/s Nayasa Multiplast, Industrial Area, Bela Bathari, Tehsil Haroli,  
District Una, H.P. ..Respondent.

02-01-2013 Present: Petitioner with Sh. R.K. Singh Parmar, A.R.  
Sh. Naginder Singh, Plant Incharge for the respondent with  
Miss Seema Sharma, Adv.

Rejoinder filed. The parties have compromised. Statements recorded separately. Keeping in view the same, the instant claim petition is allowed in part. The termination of the services of the petitioner by the respondent w.e.f. 01-09-2010 is set aside and quashed. The petitioner/claimant will join the duties tomorrow i.e. on 03-01-2013 at 10.00 A.M. He shall be entitled to the seniority and continuity in service from the date of his termination i.e. 01-09-2010. The petitioner will also be paid a lump-sum amount of Rs. 10,000/- in lieu of the back wages etc. by the respondent as undertaken. Parties to bear their own costs.

The reference is answered in the aforesaid terms.

A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

File after completion be consigned to the Records.

Announced:

RAJAN GUPTA  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 370/2012**

Sh. Krishan Chand s/o Sh. Sukh Ram, r/o Village, P.O. Pajalag, Tehsil Joginder Nagar, Distt. Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division, Joginder Nagar, Distt. Mandi, H.P.

*..Respondent.*

05-01-2013 Present: None for the petitioner.

Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the petitioner. He (petitioner) too is absent despite service/ knowledge. It is already 2.30 P.M. This indicates that the petitioner is not interested to pursue the matter. Consequently, he is not entitled to any relief. The termination of the services of the petitioner/ claimant by the respondent from time to time/giving breaks in service is held to be legal and justified. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.

3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

4. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 372/2012**

Sh. Manoj Kumar s/o Sh. Roshan Lal, r/o Village Pohal, P.O. Pipli, Tehsil Joginder Nagar, Distt. Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division, Joginder Nagar, Distt. Mandi, H.P.

*..Respondent.*

05-01-2013 Present: None for the petitioner.

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Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the petitioner. He (petitioner) too is absent despite service/ knowledge. It is already 2.30 P.M. This indicates that the petitioner is not interested to pursue the matter. Consequently, he is not entitled to any relief. The termination of the services of the petitioner/ claimant by the respondent from time to time/giving breaks in service is held to be legal and justified. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.

3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

4. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 378/2012**

Sh. Milkhi Ram s/o Sh. Chamaru Ram, r/o Village Sanahli, P.O. Tulah, Tehsil Joginder Nagar, Distt. Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division, Joginder Nagar, Distt. Mandi, H.P.

*..Respondent.*

05-01-2013 Present: None for the petitioner.

Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the petitioner. He (petitioner) too is absent despite service/ knowledge. It is already 2.30 P.M. This indicates that the petitioner is not interested to pursue the matter. Consequently, he is not entitled to any relief. The termination of the services of the petitioner/ claimant by the respondent from time to time/giving breaks in service is held to be legal and justified. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.

3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

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4. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

---

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 383/2012**

Sh. Ghanshyam Singh s/o Sh. Budhi Ram, r/o Village & P.O. Khadar, Tehsil Joginder Nagar, Distt. Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division, Joginder Nagar, Distt. Mandi, H.P.

*..Respondent.*

05-01-2013 Present: None for the petitioner.

Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the petitioner. He (petitioner) too is absent despite service/ knowledge. It is already 2.30 P.M. This indicates that the petitioner is not interested to pursue the matter. Consequently, he is not entitled to any relief. The termination of the services of the petitioner/claimant by the respondent from time to time/giving breaks in service is held to be legal and justified. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.
3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
  
4. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 369/2012**

Smt. Ruma Devi w/o Sh. Roshan Lal, r/o Village Matha Thana, P.O. Panjalag Tehsil Joginder Nagar, Distt. Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division, Joginder Nagar, Distt. Mandi, H.P.

*..Respondent.*

05-01-2013 Present: None for the petitioner.

Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the petitioner. She (petitioner) too is absent despite service/knowledge. It is already 2.30 P.M. This indicates that the petitioner is not interested to pursue the matter. Consequently, she is not entitled to any relief. The termination of the services of the petitioner/claimant by the respondent from time to time/giving breaks in service is held to be legal and justified. Parties to bear their own costs.

2. The reference is answered in the aforesaid terms.

3. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

4. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT MANDI)**

**Ref: No. : 313/2012**

Sh. Gopi Ram s/o Sh. Dagi Ram, r/o Village Gurahala(Panjond), P.O. Thaltukhod, Tehsil Padhar, District Mandi, H.P.

*..Petitioner.*

*Versus*

The Divisional Forest Officer, Wild Life Division, Kullu, H.P.

*..Respondent.*

08-01-2013 Present: None for the petitioner.

Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

The case has been called out repeatedly at intervals before and after the lunch. None has appeared on behalf of the petitioner/claimant. He and his Id. csl. are absent despite knowledge. Even the statement of claim/demand has not been filed till date. It is already 2.30 P.M. This indicates that the petitioner is not interested to pursue the matter. Consequently, he is not entitled to

any relief. The termination of the services of the petitioner by the respondent from time to time during the years 1979 to 2008 and, thereafter, the final termination of his (petitioner) services by the respondent w.e.f. July, 2008 is held to be legal and justified. Parties to bear their own costs.

The reference is answered in the aforesaid terms.

A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 204/2012**

Sh. Anil Singh s/o Shri Jaswant Singh, r/o Village and P.O. Mundhi, Tehsil Thural, District Kangra, H.P.

*..Petitioner.*

*Versus*

The Director, KAYAKALP Vivekanand Medical Research Trust, Palampur, District Kangra, H.P.

*..Respondent.*

14-01-2013 Present: Sh. Vijay Kaundal, Adv., csl. for the petitioner.  
 Sh. S.K. Sharma, Adv., csl. for the respondent.

No PW is present today despite the grant of the last opportunity. In view of the separate statement made by the ld. csl. for the claimant/petitioner, the claim petition is dismissed as withdrawn. Consequently, it is held that the termination of the services of the petitioner by the respondent w.e.f. 28-07-2010 is legal and justified. Parties to bear their own costs.

The reference is answered in the aforesaid terms.

A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 165/2012**

Sh. Ganpat Ram s/o Sh. Jhagru Ram, r/o Village and P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, I & PH Division, Padhar, Distt. Mandi, H.P.

*..Respondent.*

17-01-2013 Present: Sh. Vijay Kaundal, Adv., csl. for the petitioner.  
Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

No PW is present today despite the grant of the last opportunity. Ld. csl. for the petitioner/claimant states at bar that his client has not contacted him since long despite verbal instructions and sending a registered letter. This shows that the petitioner is not interested to pursue the matter. The perusal of the file discloses that already many opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PWs. In these circumstances, I am not inclined to grant the petitioner/claimant more time to lead the evidence. His evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has failed to adduce any evidence in support of his claim, it is concluded that he is not entitled to any relief. Giving breaks in service to the petitioner by the respondent from time to time is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 183/2012**

Sh. Jati Ram s/o Sh. Manglu Ram, Village Bhager, P.O. Chauntra, Tehsil Joginder Nagar, District Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, I & PH Division, Padhar, Distt. Mandi, H.P.

*..Respondent.*

17-01-2013 Present: Sh. Vijay Kaundal, Adv., csl. for the petitioner.  
Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

No PW is present today despite the grant of the last opportunity. Ld. csl. for the petitioner/claimant states at bar that his client has not contacted him since long despite verbal instructions and sending a registered letter. This shows that the petitioner is not interested to pursue the matter. The perusal of the file discloses that already many opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PWs. In these circumstances, I am not inclined to grant the petitioner/claimant more time to lead the evidence. His evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has failed to adduce any evidence in support of his claim, it is concluded that he is not entitled to any relief. Giving breaks in service to the petitioner by the respondent from time to time is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 176/2012**

Sh. Kuntu Ram s/o Sh. Nande Ram, r/o Village Malan, P.O. Hara Bag, Tehsil Joginder Nagar, District Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, I & PH Division, Padhar, Distt. Mandi, H.P.

*..Respondent.*

17-01-2013 Present: Sh. Vijay Kaundal, Adv., csl. for the petitioner.  
Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

No PW is present today despite the grant of the last opportunity. Ld. csl. for the petitioner/claimant states at bar that his client has not contacted him since long despite verbal instructions and sending a registered letter. This shows that the petitioner is not interested to pursue

the matter. The perusal of the file discloses that already many opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PWs. In these circumstances, I am not inclined to grant the petitioner/claimant more time to lead the evidence. His evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has failed to adduce any evidence in support of his claim, it is concluded that he is not entitled to any relief. Giving breaks in service to the petitioner by the respondent from time to time is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

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Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 187/2012**

Sh. Surinder Singh s/o Sh. Gian Chand, r/o Village Tatanka, P.O. & Tehsil Joginder Nagar, District Mandi, H.P.

..Petitioner.

*Versus*

The Executive Engineer, I & PH Division, Padhar, Distt. Mandi, H.P.

..Respondent.

17-01-2013 Present: Sh. Vijay Kaundal, Adv., csl. for the petitioner.  
Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

No PW is present today despite the grant of the last opportunity. Ld. csl. for the petitioner/claimant states at bar that his client has not contacted him since long despite verbal instructions and sending a registered letter. This shows that the petitioner is not interested to pursue the matter. The perusal of the file discloses that already many opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PWs. In these circumstances, I am not inclined to grant the petitioner/claimant more time to lead the evidence. His evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has failed to adduce any evidence in support of his claim, it is concluded that he is not entitled to any relief. Giving breaks in service to the petitioner by the respondent from time to time is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

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5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 191/2012**

Sh. Mohinder Kumar s/o Sh. Durga Dass, r/o Village Nakehar, P.O. Harabag, Tehsil Joginder Nagar, District Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, I & PH Division, Padhar, Distt. Mandi, H.P.

*..Respondent.*

17-01-2013 Present: Sh. Vijay Kaundal, Adv., csl. for the petitioner.

Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

No PW is present today despite the grant of the last opportunity. Ld. csl. for the petitioner/claimant states at bar that his client has not contacted him since long despite verbal instructions and sending a registered letter. This shows that the petitioner is not interested to pursue the matter. The perusal of the file discloses that already many opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PWs. In these circumstances, I am not inclined to grant the petitioner/claimant more time to lead the evidence. His evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has failed to adduce any evidence in support of his claim, it is concluded that he is not entitled to any relief. Giving breaks in service to the petitioner by the respondent from time to time is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 96/2012**

Sh. Charan Singh s/o Sh. Ranvir Singh, r/o Village-Kathla, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, I & PH Division, Padhar, Distt. Mandi, H.P.

*..Respondent.*

17-01-2013 Present: Sh. Vijay Kaundal, Adv., csl. for the petitioner.  
Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

No PW is present today despite the grant of the last opportunity. Ld. csl. for the petitioner/claimant states at bar that his client has not contacted him since long despite verbal instructions and sending a registered letter. This shows that the petitioner is not interested to pursue the matter. The perusal of the file discloses that already many opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PWs. In these circumstances, I am not inclined to grant the petitioner/claimant more time to lead the evidence. His evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has failed to adduce any evidence in support of his claim, it is concluded that he is not entitled to any relief. Giving breaks in service to the petitioner by the respondent from time to time is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

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Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 98/2012**

Sh. Jagdish Chand s/o Sh. Jodha Ram, r/o Village Upper Arthi, P.O. & Tehsil Joginder Nagar, District Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, I & PH Division, Padhar, Distt. Mandi, H.P.

*..Respondent.*

17-01-2013 Present: Sh. Vijay Kaundal, Adv., csl. for the petitioner.  
Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

No PW is present today despite the grant of the last opportunity. Ld. csl. for the petitioner/claimant states at bar that his client has not contacted him since long despite verbal instructions and sending a registered letter. This shows that the petitioner is not interested to pursue the matter. The perusal of the file discloses that already many opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PWs. In these circumstances, I am not inclined to grant the petitioner/claimant more time to lead the evidence. His evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has failed to adduce any evidence in support of his claim, it is concluded that he is not entitled to any relief. Giving breaks in service to the petitioner by the respondent from time to time is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 102/2012**

Sh. Subhash Chand s/o Sh. Sher Singh, r/o Village & P.O. Majhaarnoo, Tehsil Joginder Nagar, District Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, I & PH Division, Padhar, Distt. Mandi, H.P.

*..Respondent.*

17-01-2013 Present: Sh. Vijay Kaundal, Adv., csl. for the petitioner.  
Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

No PW is present today despite the grant of the last opportunity. Ld. csl. for the petitioner/claimant states at bar that his client has not contacted him since long despite verbal instructions and sending a registered letter. This shows that the petitioner is not interested to pursue

the matter. The perusal of the file discloses that already many opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PWs. In these circumstances, I am not inclined to grant the petitioner/claimant more time to lead the evidence. His evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has failed to adduce any evidence in support of his claim, it is concluded that he is not entitled to any relief. Giving breaks in service to the petitioner by the respondent from time to time is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

---

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 104/2012**

Sh. Chatter Singh s/o Sh. Chanchal Ram r/o Village & P.O. Ropri Kalehru, Tehsil Joginder Nagar, District Mandi, H.P.

..Petitioner.

*Versus*

The Executive Engineer, I & PH Division, Padhar, Distt. Mandi, H.P.

..Respondent.

17-01-2013 Present: Sh. Vijay Kaundal, Adv., csl. for the petitioner.

Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

No PW is present today despite the grant of the last opportunity. Ld. csl. for the petitioner/claimant states at bar that his client has not contacted him since long despite verbal instructions and sending a registered letter. This shows that the petitioner is not interested to pursue the matter. The perusal of the file discloses that already many opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PWs. In these circumstances, I am not inclined to grant the petitioner/claimant more time to lead the evidence. His evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has failed to adduce any evidence in support of his claim, it is concluded that he is not entitled to any relief. Giving breaks in service to the petitioner by the respondent from time to time is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

---

5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

---

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 174/2012**

Sh. Raju Ram s/o Sh. Gopal Singh, r/o Village Panjagna, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, I & PH Division, Padhar, Distt. Mandi, H.P.

*..Respondent.*

17-01-2013 Present: Sh. Vijay Kaundal, Adv., csl. for the petitioner.

Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

No PW is present today despite the grant of the last opportunity. Ld. csl. for the petitioner/claimant states at bar that his client has not contacted him since long despite verbal instructions and sending a registered letter. This shows that the petitioner is not interested to pursue the matter. The perusal of the file discloses that already many opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PWs. In these circumstances, I am not inclined to grant the petitioner/claimant more time to lead the evidence. His evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has failed to adduce any evidence in support of his claim, it is concluded that he is not entitled to any relief. Giving breaks in service to the petitioner by the respondent from time to time is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 172/2012**

Sh. Biri Singh s/o Sh. Sukh Ram, r/o Village and P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, I & PH Division, Padhar, Distt. Mandi, H.P.

*..Respondent.*

17-01-2013 Present: Sh. Vijay Kaundal, Adv., csl. for the petitioner.  
Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

No PW is present today despite the grant of the last opportunity. Ld. csl. for the petitioner/claimant states at bar that his client has not contacted him since long despite verbal instructions and sending a registered letter. This shows that the petitioner is not interested to pursue the matter. The perusal of the file discloses that already many opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PWs. In these circumstances, I am not inclined to grant the petitioner/claimant more time to lead the evidence. His evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has failed to adduce any evidence in support of his claim, it is concluded that he is not entitled to any relief. Giving breaks in service to the petitioner by the respondent from time to time is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 134/2012**

Sh. Satish Kumar s/o Sh. Tenku Ram, Village Gharoo, P.O. Ropri, Tehsil Joginder Nagar, District Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, I & PH Division, Padhar, Distt. Mandi, H.P.

*..Respondent.*

17-01-2013 Present: Sh. Vijay Kaundal, Adv., csl. for the petitioner.  
Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

No PW is present today despite the grant of the last opportunity. Ld. csl. for the petitioner/claimant states at bar that his client has not contacted him since long despite verbal instructions and sending a registered letter. This shows that the petitioner is not interested to pursue the matter. The perusal of the file discloses that already many opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PWs. In these circumstances, I am not inclined to grant the petitioner/claimant more time to lead the evidence. His evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has failed to adduce any evidence in support of his claim, it is concluded that he is not entitled to any relief. Giving breaks in service to the petitioner by the respondent from time to time is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 156/2012**

Sh. Jogeshwar Singh s/o Sh. Biri Singh, r/o Village Panjangna, P.O. Hara Bag, Tehsil Joginder Nagar, District Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, I & PH Division, Padhar, Distt. Mandi, H.P.

*..Respondent.*

17-01-2013 Present: Sh. Vijay Kaundal, Adv., csl. for the petitioner.  
Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

No PW is present today despite the grant of the last opportunity. Ld. csl. for the petitioner/claimant states at bar that his client has not contacted him since long despite verbal instructions and sending a registered letter. This shows that the petitioner is not interested to pursue the matter. The perusal of the file discloses that already many opportunities have been granted to

the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PWs. In these circumstances, I am not inclined to grant the petitioner/claimant more time to lead the evidence. His evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner has failed to adduce any evidence in support of his claim, it is concluded that he is not entitled to any relief. Giving breaks in service to the petitioner by the respondent from time to time is held to be legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 71/2011**

Smt. Kalan Devi w/o Sh. Beli Ram, Village-Bhawana, P.O. Jarol, Tehsil Sunder Nagar, Distt. Mandi, H.P.

*..Petitioner.*

*Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, Distt. Mandi, H.P.

*..Respondent.*

19-01-2013 Present: Petitioner with Sh. Suresh Sharma, Adv.  
Sh. Sanjeev Katoch, D.D.A. for the respondent.

The case is listed for the evidence of the petitioner/claimant today, but her ld. counsel has made the below given statement in the Court:-

“My client has issued a fresh demand notice to the respondent. For the said reason, I do not want to proceed with the instant reference/claim petition for the present. It be dismissed as withdrawn.”

2. In view of the above statement, the claim petition is dismissed as withdrawn. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order /Award be sent to the appropriate Government for necessary action at its end at the earliest.

5. File after due completion be consigned to the Records.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 214/2010**

Shri Balak Ram s/o Sh. Pyar Singh, r/o Village Bobar, P.O. Jarol, Tehsil Sunder Nagar, Distt. Mandi, H.P.

*..Petitioner.*

*Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, Distt. Mandi, H.P.

*..Respondent.*

19-01-2013 Present: Petitioner with Sh. Suresh Sharma, Adv.  
Sh. Sanjeev Katoch, D.D.A. for the respondent.

The case is listed for the evidence of the petitioner/claimant today, but his ld. counsel has made the below given statement in the Court:-

“My client has issued a fresh demand notice to the respondent. For the said reason, I do not want to proceed with the instant reference/claim petition for the present. It be dismissed as withdrawn.”

2. In view of the above statement, the claim petition is dismissed as withdrawn. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order /Award be sent to the appropriate Government for necessary action at its end at the earliest.

5. File after due completion be consigned to the Records.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 220/2010**

Shri Pamplu Ram s/o Sh. Kanhya Ram, r/o Village Jakhool, P.O. Kangu, Tehsil Sunder Nagar, District Mandi, H.P.

*..Petitioner.*

*Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, Distt. Mandi, H.P.

*.. Respondent.*

19-01-2013 Present: Petitioner with Sh. Suresh Sharma, Adv.  
Sh. Sanjeev Katoch, D.D.A. for the respondent.

The case is listed for the evidence of the petitioner/claimant today, but his ld. counsel has made the below given statement in the Court:-

“My client has issued a fresh demand notice to the respondent. For the said reason, I do not want to proceed with the instant reference/claim petition for the present. It be dismissed as withdrawn.”

2. In view of the above statement, the claim petition is dismissed as withdrawn. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order /Award be sent to the appropriate Government for necessary action at its end at the earliest.

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Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P*

---

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 317/2012**

Smt. Ghempi Devi w/o Late Sh. Kehnka Ram, r/o Village and P.O. Majharnu, Tehsil Joginder Nagar, Distt. Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P.  
*..Respondent.*

19-01-2013 Present: Sh. Vijay Kaundal, Adv. csl. for the petitioner.  
Sh. Sanjeev Katoch, D.D.A. for the respondent.

Reply not filed. Ld. csl. for the petitioner has made the below given statement in the Court:-

“In view of the Judgement dated 18-06-2010 passed by the Hon’ble High Court of Himachal Pradesh in CWP No. 1024 of 2008, I do not want to proceed with this reference/claim petition. It be dismissed as withdrawn.”

2. In view of the above statement, the claim petition is dismissed as withdrawn. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order /Award be sent to the appropriate Government for necessary action at its end at the earliest.
5. File after due completion be consigned to the Records.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 109/2012**

Shri Om Parkash s/o Sh. Bhadru, r/o Village and P.O. Jhamer, Tehsil Joginder Nagar, Distt. Mandi, H.P.

*.. Petitioner.*

*Versus*

The Executive Engineer, B & R Division, H.P.P.W.D.Joginder Nagar, District Mandi H.P.  
*.. Respondent.*

19-01-2013 Present: Sh. Suresh Sharma, Adv., csl. for the petitioner.  
Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

No PW is present today despite the grant of the last opportunity. Previous costs of Rs. 500/- neither paid nor deposited. Ld. csl. for the petitioner states at bar that his client has not contacted him since long despite several instructions and telephone calls. This indicates that the petitioner is not interested to pursue the matter. Otherwise too, the perusal of the file discloses that already a number of opportunities have been granted to the petitioner to lead the evidence which he has failed

to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PWs. In these circumstances, I am not inclined to grant the petitioner more time to lead the evidence. His evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner /claimant has failed to adduce any evidence in support of his claim, I have no hesitation to conclude that he is not entitled to any relief. Consequently, the claim petition is dismissed. It is held that the termination of the services /giving breaks in service to the petitioner by the respondent from time to time during the year 1998 to August, 2007 is/was legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

---

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 113/2012**

Shri Om Prakash s/o Sh. Bhadar Singh, r/o Village Ladwan, P.O. Pipli, Tehsil Joginder Nagar, Distt. Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, B & R Division, H.P.P.W.D.Joginder Nagar, District Mandi H.P.  
*..Respondent.*

19-01-2013 Present: Sh. Suresh Sharma, Adv., csl. for the petitioner.  
Sh. Sanjeev Katoch, Dy.D.A. for the respondent.

No PW is present today despite the grant of the last opportunity. Previous costs of Rs. 500/- neither paid nor deposited. Ld. csl. for the petitioner states at bar that his client has not contacted him since long despite several instructions and telephone calls. This indicates that the petitioner is not interested to pursue the matter. Otherwise too, the perusal of the file discloses that already a number of opportunities have been granted to the petitioner to lead the evidence which he has failed to do. Till date, neither any list of witnesses has been filed nor the steps taken to summon the PWs. In these circumstances, I am not inclined to grant the petitioner more time to lead the evidence. His evidence is, accordingly, closed by the order of the Court.

2. Since the petitioner / claimant has failed to adduce any evidence in support of his claim, I have no hesitation to conclude that he is not entitled to any relief. Consequently, the claim petition is dismissed. It is held that the termination of the services/giving breaks in service to the petitioner by the respondent from time to time during the year 2001 to August, 2007 is/was legal and justified. Parties to bear their own costs.

3. The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. Be consigned to the Records after due completion.

Announced:

RAJAN GUPTA,  
Presiding Judge,  
*Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref. No. : 10/201  
Date of Institution : 31.3.2011  
Date of Decision : 17.01.2013**

Shri Bhim Singh s/o Shri Narotam Singh, r/o Village Labana, P.O. Talyahar, Tehsil Sadar, Distt. Mandi, H.P.

*..Petitioner*

*Versus*

The Executive Engineer, HPSEB, Electrical Division, Mandi, H.P.

*..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. K.S. Guleria, Adv.

For the Respondent : Sh. Bhanwar Bhardwaj, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of the services of Shri Bhim Singh S/O Shri Narotam Singh, w.e.f. 25.5.1999 by The Executive Engineer, HPSEB, Electrical Division, Mandi, H.P. without serving notice, without conducting enquiry and without following the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to from the employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar on muster roll basis by the respondent w.e.f. 25.12.1997. He served as such up-to 24.5.1999. On 25.5.1999, his services were terminated by the respondent by a verbal order. Before the termination of his services, neither any notice was given to him nor the retrenchment compensation was paid. During the period of his employment, the respondent used to give him the artificial breaks so that he does not acquire the status and

privileges of a permanent workman as well as favour the juniors. At the time of the termination of his services, the persons junior to him were retained in service by the respondent. One Smt. Uma Devi w/o Shri Praveen Kumar, who is junior to him, was allowed to complete 240 days of work. Her services have also been regularized by the respondent. The latter failed to adhere to the principle of 'last come first go'. Not only this, after his disengagement, new/fresh hands have been appointed by the respondent. He was not given an opportunity of reemployment. From the date of his disengagement, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- "(i) That the illegal termination/retrenchment order dated 25.5.1999, may kindly be set aside and the respondent/employer may be directed to re-engage/reinstate the applicant continuously with back wages and all consequential benefits.
- (ii) That the period interrupted services may be counted towards continuous service and respondents/employer may be directed to consider the period of his continuous service for the purpose of work charge status/regularization in accordance with the judgment of Apex Court in this behalf with all consequential benefits, and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable. The same is wholly misconceived and groundless. The petitioner has no cause of action and locus standi to sue. He is estopped from filing the claim petition by his act and conduct. The petitioner has concealed the true facts from the Court. He has not come to the Court with clean hands. The claim petition is time barred. The same is baseless and flagrant abuse of the process of law. The petition has been preferred to blackmail him (respondent) and take undue advantages.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 25.12.1997. He worked up-to 24.1.1998 and, thereafter, did not report for duty in Talyahar section under the office of Assistant Executive Engineer, Electrical Sub Division, Mandi. After that, the services of the petitioner were re-engaged by the office of Assistant Executive Engineer, Electrical Sub Division, Saigalu on 05.2.1999 and he worked up-to 24.5.1999. Thereafter, the petitioner left the job of his own sweet will. Neither the petitioner served continuously nor completed 240 days of work in any calendar year of his employment. No artificial/fictional breaks were ever provided to the petitioner. His services were not retrenched as alleged. No person junior to the petitioner has been retained in service or engaged/re-engaged. Since the petitioner left the job without any intimation, he (respondent) had no other alternative, but to engage another person to run day to day affairs of the Board. The petitioner has not been victimized. As the petitioner willingly left the service he is not entitled to any protection under the Act. No provision of the Act has been infringed. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed with special costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been disputed that he used to remain willfully absent from work or abandoned the job.

5. Per order dated 01.5.2012, following issues were struck.

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 25.05.1999 is illegal and unjustified? OPP
2. Whether the petitioner has a cause of action? OPP
3. Whether the petition is not maintainable in the present form? OPR
4. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? OPR
5. Whether the petitioner has the locus-standi to sue? OPP
6. Whether the petitioner has concealed the true and material facts from the Court as alleged. If so, its effect? OPR
7. Whether the petition is time barred? OPR
8. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes  
 Issue No.2 : Yes  
 Issue No.3 : Not pressed  
 Issue No.4 : Not pressed  
 Issue No.5 : Yes  
 Issue No.6 : Not pressed  
 Issue No.7 : No  
 Relief. : Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### **Issue No. 1**

8. The petitioner Shri Bhim Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he used to remain absent from work and left the job willingly. He also denied that his services were engaged for a specific work. He admitted that he did not complete 240 days of work in any calendar year of his engagement. He denied that to derive undue advantages, he has instituted a phoney petition.

9. Conversely, Shri Devender Kumar, Assistant Executive Engineer, HPSEB, Sub Division, Saigalu, holding the additional charge of Sub Division, Mandi testified as RW1. He corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he admitted that as per the record neither any notice was given to the petitioner after he left the job nor the departmental proceedings were initiated against him. He also admitted that Smt. Uma Devi was appointed in the year 1998. Further, he admitted that as per

the seniority list, many new persons were engaged. As and when new/fresh hands were engaged a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were retrenched in a wrongful manner.

10. Exts. RW1/A and B are the mandays charts relating to the petitioner. They unfold that he served the respondent/Board intermittently from 25.12.1997 to 24.5.1999.

11. No reference has been received from the appropriate Government regarding providing the artificial/fictional breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

12. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily waged beldar on 25.12.1997 and he served intermittently up-to 24.5.1999. The respondent has not placed on the record any document evidencing that the petitioner was appointed for a specific work or duration.

13. The version of the petitioner is that on 25.5.1999, his services were wrongly and illegally terminated by the respondent by an oral order. While denying the said fact, the respondent has pleaded that the petitioner used to work as per his sweet will. He did not report for his duties after 24.5.1999 and abandoned the job of his own accord and free volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty it cannot be presumed that he has left/abandoned the job. It is there in the statement of Shri Devender Kumar (RW1) that no notice was served upon the petitioner calling upon him to resume the work after he allegedly left the service. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

14. The mandays charts Exts. RW1/A and B reveal that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 25.5.1999 as envisaged under Section 25-B of the Act. Thus, the provisions of Section 25-F of the Act are not attracted in this case.

15. From the statement made by RW1, it can be gathered that one Smt. Uma Devi was appointed by the respondent in the year 1998. She is junior to the petitioner (who was appointed in the year 1997) and is still serving the respondent/Board. This indicates that the respondent failed to abide by the principle of 'last come first go'. Not only this, RW1 admitted that after the disengagement of the services of the petitioner, new/fresh hands were engaged. At the time of engaging new/fresh hands, an opportunity of re-employment was not afforded to the petitioner. In these circumstances, it can be safely said that the respondent has flouted the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date of his retrenchment.

16. This issue is decided in favour of the petitioner and against the respondent.

#### **Issues No.2 and 5**

17. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

18. Taking into account, my findings on issue No.1 above, it is held that the petitioner has a cause of action and the locus standi to sue.

19. These issues are also decided in his (petitioner's) favour.

### **Issue No.7**

20. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in Liaq Ram Versus State of H.P. & others, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

22. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For these reasons, he is not entitled to the back wages.

23. This issue too is decided in favour of the petitioner and against his opponent.

### **Issues No. 3,4 and 6**

24. Not pressed.

### **Relief (Issue No. 8)**

25. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. 25.5.1999 except back wages. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of January, 2013.

RAJAN GUPTA,  
Presiding Judge,  
*Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 191/2010**

**Date of Institution : 31.5.2010**

**Date of Decision : 04.01.2013**

Miss Filen Dei d/o Shri Hoshiar Chand, r/o Village Chasak, P.O. Sechu, Tehsil Pangi, Distt. Chamba, H.P. (now dead), through her legal heirs.

- (i) Sh. Hoshiar Chand s/o Sh. Dharam Singh, Vill. Chasak, P.O. Sech, Tehsil Pangi, Distt. Chamba (HP) (Father of deceased workman)
- (ii) Sh. Prem Singh s/o Sh. Hoshiar Chand, Vill. Chasak, P.O. Sech, Tehsil Pangi, Distt. Chamba (HP) (Brother of deceased workman)
- (iii) Sh. Bhag Singh s/o Sh. Hoshiar Chand, Vill. Chasak, P.O. Sech, Tehsil Pangi, Distt. Chamba (HP) (Brother of deceased workman)
- (iv) Sh. Surinder Singh s/o Sh. Hoshiar Chand, Vill. Chasak, P.O. Sech, Tehsil Pangi, Distt. Chamba (HP) (Brother of deceased workman)
- (v) Sh. Shyam Lal s/o Sh. Hoshiar Chand, Vill. Chasak, P.O. Sech, Tehsil Pangi, Distt. Chamba (HP) (Brother of deceased workman)

..Petitioner(s)

*Versus*

The Executive Engineer, HPPWD Division, Pangi at Killar, Distt. Chamba, H.P.

..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner(s) : Sh. T.R. Bhardwaj, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Miss Filen Dei D/O Sh. Hoshiar Chand by The Executive Engineer, HPPWD Division, Pangi at Killar, Distt. Chamba, H.P. w.e.f. Year, 2005 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily waged beldar on muster roll basis by the respondent in the month of June, 1991. She worked continuously as such up-to the month of October, 2005. During the period of her employment, she completed more than 160 days of work (Pangi is tribal area) in each and every calendar year of her engagement. In the month of November, 2005, her services were disengaged by the respondent by a verbal order. Before the termination of her services neither any notice was given to her nor the wages in lieu of the notice period and the retrenchment compensation were paid. Even prior approval of the Government was not obtained by the respondent before her retrenchment. At the time of her disengagement, the persons junior to her

were retained in service by the respondent in contravention of the principle of 'last come first go'. She never absented from her duties. During the period of her engagement, the respondent used to give her the fictional breaks so as to help the workmen junior to her who were his (respondent's) favorites. Artificial breaks were given intentionally so that she does not complete 160 days of continuous service in a calendar year. Before the termination of her services, the overall Divisional level seniority list of daily waged workmen was not circulated by the respondent. After her disengagement, a number of new/fresh hands have been engaged by the respondent. A number of junior workmen whose services were retrenched alongwith her (petitioner), have also been re-engaged by the respondent. She was not given an opportunity of reemployment. If her services would not have been terminated illegally and the intermittent breaks would not have been given to her during the service period, she must have completed 10 years of continuous service as on 31.12.2000 and would have become entitled for regularization w.e.f. 01.1.2001 as per observations made by the Hon'ble Apex Court in the case titled as Mool Raj Upadhyaya versus State of Himachal Pradesh. She is/was also entitled to the regularization under the 10 years and 8 years regularization policies of the Government of Himachal Pradesh. The services of the persons junior to her have already been regularized by the respondent. She has spot less service record. An opportunity of being heard was not afforded to her before the termination. She is unemployed from the month of her illegal termination i.e. November, 2005. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “(a) The oral orders of termination from daily waged services of the petitioner passed by the respondent w.e.f. November, 2005 be set-aside being illegal, arbitrary and unjustified.
- (b) To direct the respondent to reinstate the services of petitioner w.e.f. November, 2005 alongwith full back wages, seniority including continuity of services as the petitioner remained un-employed since the date of illegal retrenchment/termination of services.
- (c) To direct the respondent to count the period of intermittent/frictional breaks given in the entire service to the applicant prior to November, 2005 from time to time be counted towards the calculation of continuous service of 160 days in each year (as laid down for the tribal area of Pangi) under section 25B of ID Act and regularize the services of the petitioner w.e.f. 01/01/2000 under the 10/8 year regularization policy of the Govt. along with all consequential benefits.
- (d) To direct the respondent for the production of original record pertaining to the case of petitioner.
- (e) To direct the respondent to re-engage petitioner on Muster Roll basis pending final decision of the case.
- (f) Any other relief as the Hon'ble court may deem fit”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petition is bad for non-joinder of the necessary parties and mis-joinder of the parties. It suffers from the vice of

delay and laches. The claim petition does not lie since no legal or fundamental right of the petitioner has been infringed.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar in the year 1991. She worked for 189 days in the year 1991, 155 days in the year 1992, 34 days in the year 1993, 94 days in the year 1994, 136 ½ days in the year 1995, 144 days in the year 1996, 184 days in the year 1997, 126 days in the year 1998, 110 ½ days in the year 1999, 84 days in the year 2000, 113 ½ days in the year 2001, 108 ½ days in the year 2002, 121 days in the year 2003, 98 days in the year 2004 and 83 days in the year 2005. Thereafter, the petitioner left the job of her own. Her mandays chart is annexure R-1. As per the instructions issued by the Government, 160 days of continuous service during each and every calendar year is required for eight years in the tribal area of Killar (Pangi) for seniority/regularization. Since the petitioner did not fulfill the said criteria, her name could not be considered for seniority/regularization. No fictional breaks were ever given to the petitioner as alleged. She was not a sincere worker from the very beginning and used to work as per her convenience. No person junior to the petitioner has been retained in service or engaged/re-engaged. Since the petitioner abandoned the job, no show cause notice was required to be given to her. She is gainfully employed. The instant industrial dispute has been raised by the petitioner at a belated stage. Since the petitioner voluntarily left the service, she is not entitled to any protection under the Act. The petition is meritless. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the period beyond working season i.e. November to April in each year is required to be counted for continuous service under Section 25-B of the Act as the cessation of the work is/was not due to her fault. Muster rolls are not issued by the respondent during these months due to the heavy snow fall. The respondent has not counted the period from November to April for the purpose of continuous service which is illegal and unjustified. S/Shri Hukam Chand and Hari Chand etc. are junior to her. They are working with the respondent. The services of some of the junior workmen have also been regularized at her cost. Apart from it, three new workmen namely S/Sh. Sham Lal, Dev Raj and Gautam Singh were appointed by the respondent in the years 2006 and 2007 i.e. much after the termination of her services. She was not afforded an opportunity of reemployment.

5. Per order dated 22.5.2012, following issues were struck.

1. Whether the termination of the services of the petitioner (late Miss Filen Dei) by the respondent is/was illegal and unjustified as alleged? OPP
2. Whether the petition is not maintainable in the present form? OPR
3. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? OPR
4. Whether the petition is bad for non-joinder and mis-joinder of necessary parties as alleged. If so, its effect? OPR
5. Whether the petition suffers from the vice of delay and laches as alleged. If so, its effect? OPR
6. Relief.

6. At this stage, I will like to highlight that the petitioner/workman Miss Filen Dei died during the pendency of the petition. Her legal heirs were brought on the record.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : Not pressed

Issue No.4 : Not pressed

Issue No.5 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### **Issue No.1**

9. Shri Shyam Lal (one of the legal heirs of the deceased petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that late Miss Filen Dei left the job of her own and used to remain absent from work because of which she could not complete 160 days of work in a calendar year of her engagement. He admitted that the deceased petitioner used to make both the ends meet by doing the work of agriculture. He denied that since the deceased petitioner left the job willingly, she was not entitled to the re-employment etc.

10. Conversely, Shri M.P. Dhiman, Executive Engineer, HPPWD, Division, Killar (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that intermittent breaks were provided to the petitioner from time to time. He also denied that the deceased petitioner worked for 160 days continuously in each and every calendar year of her engagement.

11. Ex. PW1/B is the list of the daily waged workers, who were regularized on completion of eight years or more service as on 31.3.2008 with a minimum of 240 days in non-tribal area and 180/160 days in tribal area in each calendar year issued by the respondent.

12. Ex. PW1/C is the seniority list of daily waged workers who have completed eight years of continuous service as on 31.3.2010 with 160 days of work in each calendar year in respect of I&PH Sub Division, Killar (Pangi).

13. Ex. PW1/D is the month/year-wise mandays detail of Shri Balak Chand & others.

14. Ex. RW1/A is the mandays chart relating to the petitioner (late Miss Filen Dei).

15. No reference has been received from the appropriate Government regarding providing the fictional breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the month of June, 1991 and she worked as such up-to the month of

October, 2005. The version of the petitioner is that in the month of November, 2005, her services were wrongly and illegally terminated by the respondent by a verbal order. While denying the said fact, the respondent has pleaded that the petitioner was not a sincere worker. She used to work as per her convenience and abandoned the job in the month of November, 2005 of her own accord and free volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. The respondent (RW1) nowhere stated that after the petitioner allegedly left the service, a notice was given to her calling upon her to resume the duties. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

17. The assertion of the petitioner that the period beyond working season i.e. from November to April every year is required to be counted for the purpose of continuous service under Section 25-B of the Act deserves outright rejection since the same is against the law. Due to the snow fall in the tribal area, the Government has fixed the criteria of 160 days of continuous work (instead of 240 days) in that area.

18. It is not the case of the petitioner that the mandays chart Ex. RW1/A produced by the respondent is incorrect. Its perusal discloses that the petitioner did not complete 160 days of work in a block of 12 calendar months preceding the date/month of her termination i.e. November, 2005 as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

19. The lists Exts. PW1/B to D clarify that at the time of the disengagement of the services of the petitioner, the persons junior to her namely Shri Tek Chand etc. were retained in service by the respondent. Not only this, after the termination of the services of the petitioner in the month of November, 2005, new/fresh hands namely S/Sh. Sham Lal, Dev Raj and Gautam Singh were engaged by the respondent in the years 2006 and 2007. There is nothing on the file to show that at the time of engaging new/fresh hands an opportunity of reemployment was afforded to the petitioner. The respondent has failed to abide by the principle of 'last come first go'. He has flouted Sections 25-G and 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 240/160 days of work in a block of 12 calendar months anterior to the date/month of her termination.

20. This issue is decided in favour of the petitioner and against the respondent.

#### **Issues No. 2 to 4**

21. Not pressed

#### **Issue No. 5**

22. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

23. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our Hon'ble High Court in Liaq Ram Versus State of H.P. & others, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

24. Shri Shyam Lal (PW1) admitted during the cross-examination that the deceased petitioner used to earn the livelihood by doing the work of agriculture. There is no cogent and convincing evidence on the record to show that during the period of her forced idleness, the petitioner, who was a young unmarried lady, was not gainfully employed. For these reasons, she is not entitled to the back wages.

25. This issue is also decided in favour of the petitioner and against the respondent.

#### **Relief (issue No. 6)**

26. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. She shall be entitled to the seniority and continuity in service from the date/month of her illegal termination i.e. November, 2005 except back wages. No orders regarding the reinstatement in service of the petitioner/workman are being passed since she has already expired. The respondent is directed to consider the case of the petitioner (late Miss Filen Dei) for regularization of her services within a period of six months from today. If she is found entitled to the regularization or financial benefits, if any, the same shall be released in favour of her legal representatives by the respondent in accordance with law. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of January, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

#### **IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 107/2010  
Date of Institution : 20.5.2010  
Date of Decision : 21.01.2013**

Shri Jaidev s/o Shri Krishanu Ram, r/o Village & P.O. Makri Markand, Tehsil Sadar, District Bilaspur, H.P.

..Petitioner.

*Versus*

1. Project Officer, District Rural Development Agency, Bilaspur, District Bilaspur, H.P.

2. Deputy Commissioner-cum-Chief Executive Officer, District Rural Development Agency, Bilaspur, District Bilaspur, H.P.

..Respondents.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent(s) : Sh. Sanjeev Katoch, Dy. D.A.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of the services of Shri Jaidev S/O Shri Krishanu Ram by (1) Project Officer, District Rural Development Agency, Bilaspur, District Bilaspur, H.P. (2) Deputy Commissioner-cum-Chief Executive Officer, District Rural Development Agency, Bilaspur, District Bilaspur, H.P. w.e.f. 31-03-2006 without serving charge sheet, without holding enquiry and without complying the provisions of The Industrial Disputes Act, 1947 is proper and justified? If not, to what back wages, service benefits and relief the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent No.1 on 16.2.2001 in a scheme viz. Gold Mine Project Poly House, Makri (Bilaspur). He served as such continuously up-to 31.3.2006. He used to grow the flowers in the Poly House, sell the same and look after the Poly House. On 31.3.2006, in the evening, his services were terminated by the respondent No.1 by a verbal order. Before the termination of his services neither any notice was given to him nor he was informed about the misconduct, if any. He completed 240 days of work in each and every calendar year of his engagement. After the termination of his services, he requested the respondents time and again to reemploy him, but in vain. The same amounts to unfair labour practice. A demand notice dated 06.4.2006 was served upon the respondents by him, but of no avail. From the date of his retrenchment, he is unemployed. The act and conduct of the respondents is illegal and unjustified. It is also violative of Section 25-F of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, he (petitioner) prays that the termination order dated 31.3.2006 be upset. The respondents be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondents appeared. They filed joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. DRDA (District Rural Development Agency) is supposed to carry on the work of different schemes entrusted to it. It does not fall within the definition of an industry as provided under Section 2(j) of the Act. The petitioner has no cause of action. His engagement was on account of a scheme/project i.e. Gold Mines Project for economic Up-liftment of rural poor through adoption of Mushroom cultivation, Floriculture and Sericulture in District Bilaspur. The project/scheme was for a period of 5 years and was completed in the month of September, 2005. The petitioner was initially engaged in the scheme/project in the month of March, 2001 vide muster roll No. 3. The claim petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been denied that the services of the petitioner were engaged as a daily waged beldar on 16.2.2001. Instead, the petitioner was appointed in the month of March, 2001 under Gold Mines Project (Demo Farm). The project was financed by the Central Government for a period of 5 years. The project was initiated by the DRDA, Bilaspur as its sole executing agency in

the month of October, 2000 and was completed. The term of the project was for a specific period of 5 years. The services of the workmen and other officials engaged in the project were co-terminus with the expiry of the term of the project. As per the requirement of the project, the services of the petitioner were engaged up-to the month of March, 2006. On the completion of the project, the services of the petitioner were duly disengaged by issuing notice No.3712, dated 31.3.2006. Alongwith the notice, advance salary of Rs.2100/- was paid to the petitioner vide cheque No.756167. The notice and advance pay were duly accepted by the petitioner on 31.3.2006 itself. All the workmen, who were engaged in the project (including the petitioner), were duly apprised about the terms and conditions of their services as well as the continuity of the project while issuing muster roll No.3. When the workmen gave free consent regarding the service conditions, the muster rolls were issued in their names. None of the workmen who were engaged under the Gold Mines Project has/have been retained in service or re-engaged by them (respondents). It has been owned that the demand notice dated 06.4.2006 was served by the petitioner. He did not complete 240 days of continuous service in many years of his engagement. No fictional breaks were ever provided to the petitioner. They (respondents) did not indulge in any unfair labour practice. The services of the petitioner were disengaged as per law. After the termination of his services, the petitioner is gainfully employed as an agriculturist. No provision of the Act has been flouted. The petition is meritless. The petitioner is not entitled to any relief.

In these circumstances, the respondents pray that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Per order dated 22.12.2011, following issues were struck by my ld. Predecessor:

1. Whether the disengagement of the petitioner w.e.f. 31.2.2006 is violative of the provisions of Section 25-F of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? OPP
2. Whether the reference is not maintainable as the petitioner was stated to have been working under the scheme/project as alleged. If so, to what effect? OPR
3. Whether the reference is hit by vice of delay and laches as alleged. If so, to what effect? OPR
4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : Not pressed

Relief : Claim petition dismissed vide operative portion of the Award.

#### REASONS FOR FINDINGS

#### **Issues No.1 and 2**

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Jaidev stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were engaged in Gold Mines Project which was for 5 years in District Bilaspur. The project related to floriculture, sericulture and mushroom growth. His services were engaged for the purposes of floriculture. The muster roll Ex. R1 (corresponding to Ex. RW1/E) from 12.3.2001 to 31.3.2001 bears his signatures. He denied that the muster roll was signed by him voluntarily. He admitted that the Gold Mine Project ended in the month of September, 2005. He (PW1) worked up-to the month of March, 2006. He feigned ignorance about the fact that his services were disengaged by the respondent by issuing him a notice and paying the salary of one month. Notice Ex. R2 (corresponding to Ex. RW1/C) has been signed by him in token of its receipt. He admitted that the other persons who were working in the project alongwith him have not been re-engaged by the respondents. He makes both the ends meet by doing the work of agriculture. He denied that at the time of his appointment, it was conveyed to him that his services will automatically come to an end on the completion of the project. He does not know that a letter Ex. R3 (corresponding to Ex. RW1/B) in this regard was written to him. Ex. R3 bears his signatures.

10. Conversely, Shri Bhumi Chand Thakur, Project Officer, DRDA, Bilaspur (respondent No.1) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the services of the petitioner were terminated in a wrongful manner and he has furnished a wrong affidavit. 11. Ex. PW1/B is the copy of the demand notice dated 06.4.2006 served upon the respondents by the petitioner.

12. Ex. PW1/C is the mandays chart relating to the petitioner. It corresponds to Ex. RW1/F.

13. Ex. RW1/D is the copy of the letter dated 27.9.2k written by the Department of Rural Development, Ministry of Rural Development, Government of India regarding the detailed guidelines pertaining to the Gold Mines Project.

14. Ex. RW1/G is the mandays chart with respect to Shri Ram Chand and others deployed in Demo Farm, Makri under Gold Mine Project. 15. The petitioner has not placed on the record any document evidencing that his services were engaged as a daily waged beldar on 16.2.2001. Instead, from Exts. R1 and RW1/E i.e. the copies of the muster roll from 12.3.2001 to 31.3.2001, it can be gathered that the services of the petitioner were engaged in Gold Mine Project for the purpose of floriculture on 12.3.2001.

16. The evidence available on the record goes to show that the services of the persons who were employed in the project were to come to an end automatically on the conclusion/completion of the project. The petitioner (PW1) in his cross-examination admitted that none of the persons who were working in the project alongwith him has been re-engaged by the respondents.

17. The services of the petitioner were disengaged by the respondents per letter dated 31.3.2006, the copy of which is Ex. R2 (corresponding to Ex. RW1/C). This letter and one month wages amounting to Rs.2100/- were received by the petitioner without any protest. He even signed the termination letter/notice as a token of its receipt. Not only this, per letter dated 13.9.2002, the copies of which are Exts. R3 and RW1/B, the respondent No.1 had intimated the petitioner that his temporary services engaged in the project/farm can be terminated w.e.f. 30.9.2002 (evening).

18. There is satiable evidence on the file to establish that the services of the petitioner were engaged in a scheme/project. He was duly intimated that on the completion of the project, his services are liable to be disengaged.

19. In S.M. Nilajkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608, the Hon'ble Supreme Court has held as under:

“.....The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:-

- (i) that the workman was employed in a project or scheme or temporary duration;
- (ii) the employment was on a contract, and not as a dailywager simplicitor, which provided interalia that the employment shall come to an end on the expiry of the scheme or project; and
- (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.
- (iv) The workman ought to have been apprised or made aware of the above said terms by the employer at the commencement of employment.....”

20. Taking into account the facts and circumstances of this case as well as the trite laid down in the rulings cited supra, in my considered opinion by no stretch of imagination, it can be said that the services of the petitioner were disengaged by the respondents wrongly and illegally. The claim put forth by the petitioner is fallacious. He is not entitled to any relief.

21. These issues are decided against the petitioner and in favour of the respondents.

### **Issues No. 3**

22. Not pressed.

### **Relief (Issue No.4)**

23. As a sequel to my findings on the issues No.1 and 2 above, the instant claim petition being meritless and not maintainable fails. It is, therefore, dismissed. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of January, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 117/2011**

**Date of Institution : 27-08-2011**

**Date of Decision : 21-01-2013**

Sh. Jarnail Singh s/o Sh. Hem Raj, r/o Village and P.O. Swail/Swahan, Tehsil Sh. Naina Devi Ji, Distt. Bilaspur, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, HPSEB Division, Bilaspur, Distt. Bilaspur, H.P.

*..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent. : Sh. H.S. Thakur, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Jarnail Singh s/o Sh. Hem Raj, VPO Swail/Swahan, Tehsil Shri Naina Devi Ji, Distt. Bilaspur, H.P. by The Executive Engineer, HPSEB Division Bilaspur w.e.f. 26-04-1999, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits, the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent in Sub. Division Gangwal on 26-10-1986. He worked continuously as such upto 24-12-1988. Thereafter, on 25-12-1988, the services of 64 beldars including him (petitioner) were terminated by the respondent. His name figures at serial No. 204 of the seniority list issued by the respondent. In the year 1997, 20 new/fresh hands were engaged by the respondent. No retrenched employee was reengaged by the respondent. For the said reasons, 14 retrenched workmen raised an industrial dispute before this Court vide Reference No. 12/2000 (RBT No. 223/04). Reference/claim petition was allowed by this Court/Tribunal and the 14 retrenched workmen were ordered to be reinstated in service per Award dated 26-10-2005. The Award dated 26-10-2005 was challenged by the respondent by filing CWP No. 291/2006 before the Hon’ble High Court of Himachal Pradesh. The said writ petition was decided by the Hon’ble High Court per Order/Judgment dated August 22, 2007. The workmen whose services were ordered to be reengaged by the Court are junior to him (petitioner). In the year 1998, he(petitioner) and other retrenched workmen were re-employed by the respondent. They worked for 108 days from 26-12-1998 to 25-04-1999. On the next day i.e. 26-04-1999, his (petitioner’s) services were terminated by the respondent by a verbal order. Before the termination of his services, neither any notice was given to him nor he was informed about the misconduct, if any. The same amounts to unfair labour practice. In the years 1997, 1998 and 1999 the persons junior to him were employed by the respondent. They are still serving the respondent/Board. Their names are S/Sh. Ashok Singh, Gurdass and Rakesh Kumar etc. He (petitioner) approached the

erstwhile Hon'ble Himachal Pradesh Administrative Tribunal for the redressal of his grievances by instituting an Original Application. Such Original Application was disposed off by the Hon'ble Administrative Tribunal with the remarks that it has no jurisdiction to deal with the same. The respondent has failed to adhere to the principle of 'last come first go'. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 ( 14 of 1947, 'the Act' for short) as well as the Standing Orders issued by the H.P. State Electricity Board in the year 1986.

As such, he (petitioner) prays that the oral termination order dated 26-04-1999 be set aside. The respondent be directed to reinstate him in service with all consequential benefits including seniority, continuity in service and payment of backwages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the H.P.S.E.B.(Himachal Pradesh State Electricity Board) is a body corporate incorporated under the statute. It has perpetual succession and common seal. The H.P.S.E.B. can acquire and hold both moveable and immovable property. It can sue and be sued in its name. He (respondent) is merely a functionary of the H.P.S.E.B. Since the H.P.S.E.B. has not been joined as a party to the claim petition, the same is bad for non-joinder of the necessary parties. The petition is also bad for mis-joinder of the parties. The claim petition has not been legally constituted. It is not maintainable in the present form. The petition is time barred. No legal or vested right of the petitioner has been infringed in any manner. He has no right to maintain the petition.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar during the month of October, 1986. He worked with certain interruptions for 723 days up to 25-12-1988. The services of the petitioner were engaged for a specific work. In the month of Nov., 1988, some beldars were required to be retrenched in order of juniority vide office order dated 01-11-1988. One month notice was given and the retrenchment compensation etc. were paid to the beldars whose services were disengaged. After that , when the work of casual nature cropped up, the petitioner was reemployed as a casual beldar for specific period and work. He served for 104 days w.e.f. 26-12-1998 to 25-04-1999. Thereafter, the petitioner left the job of his own. In the month of December, 1988, when the services of the petitioner were retrenched, mandatory provisions of the Act and the Standing Orders were duly complied with. No notice under Section 25-F of the Act is required to be served upon the workmen who are engaged for a specific period and work. In the year 1988, the petitioner and others were removed from service due to the nonavailability of work. However, during the year 1999, the petitioner voluntarily left the job. It stands admitted that the petitioner had instituted an Original Application before the Hon'ble Administrative Tribunal. It has been disputed that the persons junior to the petitioner are serving under him(respondent) or their services have been engaged/re-engaged. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been disputed that he left the service.

5. Per order dated 19-10-2012, following issues were struck :

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 26-04-1999 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is bad for non-joinder of the necessary parties? ..OPR.

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3. Whether the petition is not maintainable in the present form ? ..OPR.

4. Whether the petition is hit by the vice of delay and laches, as alleged. If so, its effect? ..OPR.

5. Relief.

6. I have heard the ld. counsel for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No.2 : Not pressed

Issue No.3 : Not pressed

Issue No.4 : No

Relief : Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

#### **ISSUES No. 1.**

8. The petitioner Sh. Jarnail Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he left the job of his own and did not approach the respondent for reengagement after the year 1999. He denied that he has given a phoney statement.

9. Ex.PW1/B is the copy of the revised seniority list of daily waged workmen (beldars) working in Electrical Division, HPSEB, Bilaspur as it stood on 01-09-1988.

10. Ex. PW1/C is the copy of the Award dated 26-10-2005 passed by this Court in Reference No. 12/2000 (RBT No.223/2004) titled as Sh. Hari Ram and others -vs- Secretary, H.P.State Electricity Board, Shimla and others.

11. Ex. PW1/D is the copy of the order / judgment dated 22-08-2007 rendered by the Hon'ble High Court of Himachal Pradesh in CWP No. 291 of 2006 titled as HPSEB through its Secretary –vs- Rajesh Kumar and others.

12. x. PW1/E is the copy of the order dated 06-03-2006 pronounced by the Hon'ble Himachal Pradesh State Administrative Tribunal in O.A.No. 2006/2001 titled as Jarnail Singh –vs- HPSEB through its Secretary and others. It unfolds that the Original Application preferred by the applicant/petitioner was disposed of by the Hon'ble Administrative Tribunal by holding that it has no jurisdiction to deal with the same.

13. Ex. PW1/F is the copy of the demand notice dated 20-03-2006 served upon the respondent by the petitioner.

14. Ex. PW1/G is the copy of the reply dated 10-01-2007 filed by the respondent before the Conciliation Officer-cum-Distt. Employment Officer, Bilaspur pursuant to the demand notice regarding illegal termination issued by S/Sh. Budh Ram and Chhota Ram.

15. Ex. PW1/H is the copy of the order dated April 30, 2001 passed by the Hon'ble Administrative Tribunal in O.A. No. 3618/99 titled as Sh. Roop Singh and others -vs- HPSEB and another.

16. Ex. PW1/I is the copy of an Office Order dated 22-12-1988 issued by the respondent. It was ordered that all the retrenched workmen shall remain on the seniority of the office. They shall be recalled for work as and when additional labour requirement arises in the Division as per the provisions of the Act and Standing Orders issued by the Board.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in the month of October, 1986. Initially he served from 26-10-1986 to 24-12-1988 and, thereafter, he worked from 26-12-1998 to 25-04-1999. The termination of the services of the petitioner ordered by the respondent earlier on 25-12-1988 is not in dispute. The respondent has not placed on the record any documents evidencing that the services of the petitioner were engaged for a specific work and duration.

18. The version of the petitioner is that on 26-4-1999, his services were terminated by the respondent by a verbal order wrongly and illegally. While denying the said fact, the respondent has pleaded that the petitioner abandoned the job of his own accord and free volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. The respondent has not stepped into the witness box to prove the factum of abandonment. There is nothing on record to show that a notice was served upon the petitioner calling upon him to resume his duties after he allegedly left the service. Even there is nothing on the file to show that some disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

19. There is nothing on the record to prove that the petitioner had worked for 240 days in a block of 12 calendar months preceding the date/month of his termination i.e. 26-04-1999 as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are not attracted in this case.

20. From the statement made by the petitioner (PW1) and the seniority list Ex. PW1/B, it can be gathered that at the time of termination of the services of the petitioner, the persons junior to him were retained in service by the respondent. The latter has failed to abide by the principle of 'last come first go'. Not only this, after the disengagement of the services of the petitioner, new/fresh hands were engaged by the respondent. No opportunity of reemployment was afforded to the petitioner by the respondent at the time of engaging new/fresh hands. This indicates that the respondent has flouted the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months preceding the date/month of his termination.

21. This issue is decided in favour of the petitioner and against the respondent.

### **Issues No. 2 and 3.**

22. Not pressed.

### **Issue No. 4**

23. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The*

*plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

24. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in Liaq Ram Versus State of H.P. & others, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

25. While testifying in the Court as PW1, the petitioner has given his age as 47 years. It is common knowledge that a person like the petitioner will not sit at home during the period he is /was out of service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. In these circumstances, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

#### **Relief (issue No. 5)**

27. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The termination order dated 26-04-1999 is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal retrenchment i.e. 26-04-1999 except back wages. Parties to bear their own costs.

28. The reference is answered in the aforesaid terms.

29. A copy of this Award be sent to the appropriate Govt. for publication in the official gazette.

30. File after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of January, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Industrial Tribunal-cum-*  
*Labour Court, Dharamshala, H.P.*

#### **IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 85/2010  
Date of Institution : 23.4.2010  
Date of Decision : 17.01.2013**

Shri Kanshi Ram s/o Shri Dangthu Ram, r/o Village Kapani, P.O. Janjehali, Tehsil Thunag, Distt. Mandi, H.P.

..Petitioner.

*Versus*

The Divisional Manager, G.P. State Forest Corporation, Forest Working Division Mandi, H.P.

*..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Pankaj Thakur, Adv.

For the Respondent : Sh. Pardeep Parmar, Adv.

### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Sh. Kanshi Ram S/O Sh. Dangthu Ram by The Divisional Manager, HP State Forest Corporation, Forest Working Division Mandi, H.P. vide orders dated 13.9.2007 with immediate effect on account of alleged carelessness and negligence in duty which resulted in fire of timber on 03.2.1997, where he was in duty with other coworkers is, proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that he was working as a daily waged Chowkidar (Watchman) under the respondent. He was posted to watch and ward Lots No.4 and 5 of 1995-96 in Janjehali Block at Garijanu and Kudar Silh at Una Gad Stacking and Transit Depot. The Stacked Timber was gutted in the fire. An inquiry regarding the fire incident was conducted by the representatives of the respondent. On receipt of the inquiry report from the Assistant Manager of the Corporation, he (petitioner) was blamed and his services were terminated vide order dated 13.2.1997. Against the said termination order passed by the respondent, he (petitioner) instituted an Original Application bearing No. O.A. (M) 165/1997 before the Hon'ble Himachal Pradesh Administrative Tribunal, Shimla, Bench at Mandi. Such Original Application was dismissed by the Hon'ble Administrative Tribunal per order dated 11.12.2002 on the grounds of maintainability and jurisdiction. The order of the Hon'ble Administrative Tribunal was assailed by him (petitioner) by way of Civil Writ Petition No.272/2003 before the Hon'ble High Court of Himachal Pradesh, Shimla. The writ petition was decided by the Hon'ble High Court vide judgment dated 29.12.2004. The termination order dated 13.2.1997 passed by the respondent and the order dated 11.12.2002 pronounced by the Hon'ble Administrative Tribunal were set aside by the Hon'ble High Court. It was directed by the Hon'ble High Court that his (petitioner's) services be restored with retrospective effect and he be paid the arrears of the pay etc. w.e.f. 14.2.1997 to 31.12.2004. In obedience to the judgment dated 29.12.2004 rendered by the Hon'ble High Court of Himachal Pradesh, his services were re-engaged by the respondent. Simultaneously, a fresh inquiry was initiated against him as per the orders of the Hon'ble High Court. The inquiry was not conducted in his presence. No opportunity of being heard was afforded to him. On the basis of the false report submitted by the Inquiry Officer, his (petitioner's) services were once again terminated by the respondent vide order dated 13.9.2007 with immediate effect. The termination order is wrong, illegal, null and void. The order has been passed against the principles of natural justice. Against the termination order dated 13.9.2007, he (petitioner) preferred a mercy appeal/petition on 01.11.2007 before the Managing Director, Himachal Pradesh State Forest Corporation, Shimla. The mercy appeal/petition was not entertained by the Managing Director without assigning any valid and cogent reasons for the same. He (petitioner) had rendered approximately 21 years of continuous service under the respondent. He had acquired the status of a quasi permanent workman on the basis of longevity of service. He has

been absorbed as a permanent Class-IV employee in Government Degree College, Lamba Thach (Seraj), Tehsil Thunag, District Mandi per order dated 25.8.2007 issued by the Director of Higher Education, Himachal Pradesh, Shimla. For this reason also, the termination order issued by the respondent being malafide is not sustainable in the eyes of law. There was no negligence on his part. He was not at all aware about the cause of the fire. On the fateful day, he was availing the public holiday alongwith the other Chowkidar namely Shri Brij Lal. One Shri Kanwar Singh permanent/regular timber watcher, has malafidely marked his (petitioner's) presence in the muster roll No.79/96-97 Gohar, subsequently with a view to save his skin and to involve him (petitioner) falsely. As per the rules of the department, every 7th day of the week used to be the off day. On the crucial day i.e. 03.2.1997 being the 7th day of the week, he (petitioner) observed the same as an off day. Sh. Brij Lal (Watchman) and other daily wagers also observed 03.2.1997 as an off day. The Stacked Timber, which was damaged in the fire, was duly insured. The respondent has been indemnified for the loss suffered by the ee of the Corporation namely Shri Gian Chand (Dy.Ranger) was exonerated of the charges. Shri Kanwar Singh (Timber Watcher) has been inflicted the penalty of withholding of his three annual increments with cumulative effect under Rule 11 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 per order dated 03.11.1999. In view of the said order passed by the respondent against the above named officials, the termination of his (petitioner's) services is highly unjustified and unconstitutional. Moreover, his services have been terminated when he (petitioner) had already been regularized and appointed against the permanent vacancy of a Class-IV employee. The penalty imposed upon him is extremely severe and disproportionate to the gravity of the charge leveled against him. Being a petty Class-IV employee belonging to the poor strata of the society he deserves sympathy and leniency. The act and conduct of the respondent is illegal and unjustified. It is also violative of the various provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

"the petition may kindly be accepted and impugned orders of termination of services of the petitioner, be quashed and he be re-instated and restored to services with retrospective effect with all service benefits and perks etc; and justice be done".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the petitioner/claimant has no cause of action. The claim petition is not maintainable in the present form.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged Chowkidar and a fire had broken out in timber transit depot on 03.2.1997. During the inquiry, it surfaced that the petitioner was absent from his duties. He was found negligent. Had he been vigilant, huge loss would not have accrued to the Corporation. The services of the petitioner were rightly disengaged per order dated 13.2.1997. It stands admitted that the termination order dated 13.2.1997 was challenged by the petitioner. The services of the petitioner were re-engaged pursuant to the judgment passed by the Hon'ble High Court of Himachal Pradesh. The Hon'ble High Court had kept the option open with regard to the initiation of the inquiry against the petitioner for his negligence and dereliction of duties. The judgment dated 29.12.2004 pronounced by the Hon'ble High Court of Himachal Pradesh will not come in the way of the inquiry. Proper inquiry was conducted against the petitioner. The evidence was recorded. The petitioner also submitted his defence per statement dated 22.9.2006. He (petitioner) was found guilty because of which his services were disengaged. The petitioner is trying to mislead the Court by pleading the wrong facts. The termination order dated 13.9.2007 is legal and valid. Against the termination order, the petitioner had preferred an appeal which was decided on merits. An irresponsible person

like the petitioner is not to be kept in service. The petitioner did not acquire the status of a quasi permanent workman. It has been disputed that he has been absorbed as a Class-IV employee in Government Degree College, Lambanhach in view of the longevity of service. Being surplus most of the Class-IV employees were absorbed in other departments as per the policy of the Government. The petitioner was on duty at the crucial time. His presence was not wrongly marked as alleged. It has been admitted that 7th day of every week is observed as a holiday. This rule is not applicable to the Chowkidars or Timber Watchers as they rotate their duty in accordance with the roaster and avail the leave either prior to or after the said holiday. It stands admitted that Shri Gian Chand (Dy. Ranger) was exonerated in the inquiry. The penalty of withholding the increments was imposed against the timber watcher Shri Kanwar Singh. The inquiry was initiated against the petitioner before his engagement as a Class-IV employee in the education department. The wrong was committed by the petitioner while he was serving under him (respondent). No provision of the Act has been infringed. The petition is meritless. He (respondent) has been dragged into unwarranted litigation by his opponent.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 10.5.2011, following issues were struck by my ld. Predecessor:-

1. Whether the termination of the petitioner is illegal being malafide and in contravention of the provision of law as alleged. If so to what relief the petitioner is entitled to? ..OPP.
2. Whether the reference is not maintainable as alleged. If so, to what effect? ..OPR.
3. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### **Issue No.1**

8. Shri Kanshi Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that on 03.2.1997 when the fire engulfed the depot he was on leave. He denied that the Forest Corporation suffered loss due to his fault. He also denied that during the inquiry he was found guilty. He admitted that his statement was recorded on 22.9.2006. He also admitted that being surplus, his services were absorbed in the other department. He denied that he has instituted a phoney petition.

9. Conversely, Shri Suraj Raj Sharma, Divisional Manager (respondent), who has since retired, appeared as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply submitted by the respondent.

In the cross-examination, he denied that on 03.2.1997, the petitioner was availing the paid holiday and was not on duty. He also denied that the services of the petitioner have been disengaged in a wrongful manner and no proper inquiry was held against him.

10. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged Chowkidar and a fire incident had taken place on 03.2.1997 in Timber Transit Depot causing substantial loss to the respondent/Corporation. Admittedly, the services of the petitioner were earlier terminated by the respondent per order dated 13.2.1997 which was set aside by the Hon'ble High Court of Himachal Pradesh vide judgment dated December 29, 2004 pronounced in CWP No. 272/2003, titled as Kanshi Ram vs. Himachal Pradesh State Forest Corporation and others. The operative part of the judgment of the Hon'ble High Court is reproduced below verbatim for ready reference:-

“Consequently, Annexures P-1 and P-3 passed by the respondents and Himachal Pradesh Administrative Tribunal in OA(M) No. 165/1997, dated 11.12.2002, respectively, both are quashed and set aside. Position as it existed prior to issuance of Annexure P-1 shall stand restored forthwith. The petitioner will be entitled to all consequential benefits including monetary benefits, provided he was not gainfully employed elsewhere from 14.2.1997 till date. It is, however, clarified that in case as on date respondents decide to proceed against the petitioner for his acts of negligence and dereliction of duty, this judgment will not come in their way. In such a situation, they will be entitled to proceed with the enquiry, but after affording opportunity of being heard to the petitioner. Costs on the parties”.

11. There is no denial of the fact that pursuant to the judgment dated 29.12.2004 passed by the Hon'ble High Court of Himachal Pradesh, the services of the petitioner were re-engaged and a fresh inquiry was initiated against him. On the basis of the inquiry report submitted by the Assistant Manager, the services of the petitioner were once again terminated by the respondent as a measure of punishment vide order dated 13.9.2007 which is now under challenge.

12. The inquiry report on the basis of which the action was taken against the petitioner has not been exhibited on the file. Even the Inquiry Officer has not been examined as a witness. The copy of the inquiry report is there on the record. Its perusal discloses that the petitioner/delinquent was not afforded an opportunity to cross-examine the witnesses. The inquiry was not conducted as per the prescribed procedure. Therefore, the action taken by the respondent on the basis of the inquiry report dated 23.5.2007 given by the Assistant Manager, Forest Working Unit, Gohar is patently wrong and illegal.

13. From the evidence available on the file, it can be gathered that the petitioner served the respondent continuously for more than 10 years and completed 240 days of work in each and every calendar year of his engagement. There is nothing on the record to show that before the termination of the services of the petitioner, the provisions of Section 25-F of the Act were complied with by the respondent. As already mentioned, the punishment imposed upon the petitioner on the basis of the inquiry report dated 23.5.2007 is not sustainable in the eyes of law as the inquiry itself is vitiated. The termination of the services of the petitioner by the respondent is, thus, illegal and unjustified.

14. While testifying in the Court as PW1, the petitioner has given his age as 48 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Not only this, in the claim petition, there is no whisper to the effect that after the

disengagement of the services of the petitioner by the respondent he is having no means to earn. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For these reasons, he is not entitled to the back wages.

15. This issue is decided in favour of the petitioner and against the respondent.

### **Issue No. 2**

16. Not pressed.

### **Relief (Issue No. 3)**

17. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner by the respondent per office order dated 13.9.2007 is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination except back wages. However, it is made clear that in case the respondent decides to proceed against the petitioner for his negligence and dereliction of duty, this Award will not come in his way. In such a situation, the respondent will be entitled to proceed with the inquiry and take appropriate action against the petitioner as per law. Parties to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of January, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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### **IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 118/2011  
Date of Institution : 27.8.2011  
Date of Decision : 04.01.2013**

Smt. Lachhi Devi w/o Late Shri Kishan Chand, r/o Village Kufa, P.O. Killar, Tehsil Pangi, Distt. Chamba, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division Killar, Tehsil Pangi, Distt. Chamba, H.P.

*..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Gaurav Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

## AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Lachhi Devi w/o Late Sh. Kishan Chand, Village Kufa, P.O. Killar, Tehsil Pangi, Distt. Chamba by Executive Engineer, HPPWD Division Killar, Tehsil Pangi w.e.f. October, 2005 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily waged beldar by the respondent in the month of September, 1992. She worked continuously as such upto the year 2005. She completed more than 13 years of service as a beldar under the respondent. She had worked for more than 160 days (Pangi is tribal area) in each and every calendar year of her engagement. In the year 2005, her services were terminated by the respondent without assigning any reason. At the time of her disengagement, the person junior to her namely Sh. Man Singh s/o Sh. Hukam Chand was retained in service by the respondent. She requested the respondent to convey the reasons for ousting her from service, but in vain. The act and conduct of the respondent is illegal and unjustified. The respondent has failed to comply with the principle of ‘last come first go’. He has also contravened various provisions of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:

“her reinstatement as daily wages Beldar w.e.f. 2005 and also her regularization from the date along with other person, named above, who has been regularized as such or working as daily wages Beldars in the department of the respondent also pray monthly back wages from the date he was disallowed to work as daily wages worker”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The claim petition is bad on account of delay and laches on the part of the petitioner.

On merits, it has been denied that the services of the petitioner were engaged as a daily waged beldar in the month of September, 1992. Actually, the petitioner was employed in the month of July, 1995 and she worked up-to the year 2005. The services of the petitioner were never retrenched as alleged. She left the job of her own. The petitioner does not fulfill the criteria for regularization as fixed by the Government of Himachal Pradesh. Shri Man Singh s/o Shri Hukam Chand worked regularly and continuously with the department without any break. He qualified for regularization as he completed 160 days of continuous service in each and every calendar year of his engagement for eight years continuously. No person junior to the petitioner has been retained in service or engaged/re-engaged. The petitioner never approached him (respondent) for re-employment or any other purpose. The present industrial dispute has been raised by her at a belated stage. The principle of ‘last come first go’ was adhered to.

In these circumstances, the respondent prays that the petition in hand being meritless be rejected.

4. No rejoinder has been preferred by the petitioner/claimant.
5. Vide order dated 03.08.2012, following issues were struck.
  1. Whether the termination of the services of the petitioner w.e.f. October, 2005 by the respondent is illegal and unjustified? ..OPP.
  2. Whether the petition is not maintainable in the present form? ..OPR.
  3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
  4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-
 

Issue No.1 : Yes  
 Issue No.2 : Not pressed  
 Issue No.3 : No  
 Relief : Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### **Issue No. 1**

8. Smt. Lachhi Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also stated that during the period of her engagement, the respondent used to give her the artificial breaks.

In the cross-examination, she stated that she worked from the year 1995 to 2005. She denied that she left the service of her own. Self stated, her services were terminated by the respondent. The present industrial dispute was raked up by her in the year 2008. She denied that Pangi remains snow clad for six months because of which mostly the work is carried out from the month of May to October. She admitted that in some years, she could not complete 160 days of work due to snow. Shri Man Singh etc. are senior to her. She denied that since she abandoned the job, she is not entitled to the re-employment etc.

9. Conversely, Shri M.P. Dhiman, Executive Engineer, HPPWD, Division, Killar (Pangi), respondent, testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that as per the record when the petitioner voluntarily left the service, no notice was given to her. He denied that he has given a phoney statement.

10. Ex. RW1/A is the mandays chart relating to the petitioner.

11. Ex. RW1/B is the mandays chart pertaining to Sh. Man Singh, (beldar) in the office of the respondent.

12. No reference has been received from the appropriate Government regarding providing the fictional breaks, if any, to the petitioner by the respondent. Therefore, the said controversy cannot be gone into by this Court being beyond the terms of the reference.

13. From the statement made by the petitioner (PW1), deposition made by the respondent (RW1) and the mandays chart Ex. RW1/A, it can be gathered that the petitioner served the respondent/department intermittently from the month of July, 1995 to October, 2005. The version of the petitioner is that in the month of October, 2005, her services were wrongly and illegally terminated by the respondent. While denying the said fact, the respondent has pleaded that the petitioner abandoned the job of her own accord and free volition.

14. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that she/he has left/abandoned the job. It has come in the statement of the respondent (RW1) that after the petitioner allegedly left the job, no notice was given to her calling upon her to resume her duties. Absence from duty is serious misconduct. There is nothing on the file to show that some disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

15. The mandays chart Ex. RW1/A depicts that the petitioner did not complete 160 days of work in a block of 12 calendar months preceding the date/month of her termination as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

16. From the mandays chart Ex. RW1/B, it can be gathered that the services of Shri Man Singh s/o Shri Hukam Chand were engaged as a daily waged beldar by the respondent in the year 1997. He is/was certainly junior to the petitioner, who was employed in the month of July, 1995. Admittedly, Shri Man Singh is still working with the respondent/department. There is nothing on the record to show that at the time of the termination of the services of the petitioner, the services of Shri Man Singh were also dispensed with by the respondent. This indicates that the respondent failed to abide by the principle of 'last come first go'. His action is thus violative of Section 25-G of the Act. For these reasons, the termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Section 25-G of the Act a workman need not complete 160 days of work (in the tribal area) in a block of 12 calendar months prior to the date/month of her termination.

17. This issue, is accordingly, decided in favour of the petitioner and against the respondent.

## **Issue No. 2**

18. Not pressed

## **Issue No. 3**

19. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of*

*fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

20. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our Hon'ble High Court in Liaq Ram Versus State of H.P. & others, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

21. The petitioner (PW1) during her cross-examination admitted that she makes both the ends meet by doing the work of agriculture. While testifying in the Court as PW1, the petitioner has given her age as 45 years. It is common knowledge that a young woman like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she was not gainfully employed. Not only this, in the statement of claim/petition, there is no whisper that after her disengagement the petitioner has no source of income. For these reasons, she is not entitled to the back wages.

22. This issue is also decided in favour of the petitioner and against the respondent.

#### **Relief (Issue No.4)**

23. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date/month of her illegal termination i.e. October, 2005 except back wages. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of January, 2013.

**Rajan Gupta,**  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

#### **IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 128/2011**  
**Date of Institution : 26.11.2011**  
**Date of Decision : 17.01.2013**

Shri Lal Singh s/o Shri Narain Singh, r/o Village Sihri, P.O. Gohar, Tehsil Chachyot, Distt. Mandi, H.P.

..Petitioner.

*Versus*

The Sr. Executive Engineer, HPSEB (Elect.) Division Gohar, Distt. Mandi, H.P.

..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Bimal Sharma, Adv.

For the Respondent : Sh. Bhanwar Bhardwaj, Adv.

#### AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Lal Singh S/O Sh. Narain Singh R/O Village Sihri, P.O. Gohar, Tehsil Chachyot, Distt. Mandi, H.P. by The Sr. Executive Engineer, HPSEB (Elect.) Division Gohar, Distt. Mandi, (H.P.) w.e.f. 16.3.2000 without issuing charge sheet, without conducting enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits, the above workers are entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent in the year 1989. He worked as such up-to 15.3.2000. During the period of his employment, the respondent used to give him artificial breaks. On 16.3.2000, his services were terminated by the respondent by a verbal order. Before the termination of his services, neither any notice was given to him nor the retrenchment compensation was paid. He had completed 240 days of work in each and every calendar year of his engagement. At the time of the termination of his services, the persons junior to him were retained in service by the respondent/Board. One of the juniors namely Shri Manoj Kumar was appointed by the respondent in the year 1994. The respondent adopted the policy of pick and choose which amounts to unfair labour practice. Some new persons from Padhar Division were engaged by the respondent. They continued to work up-to the month of April, 2000 i.e. after the termination of his (petitioner’s) services. When he and the other similarly situated workmen raised voice against the respondent, 16 persons engaged from Padhar Division were ousted by the respondent. In view of the availability of the work, the respondent should have given the preference to him (petitioner) keeping in view his seniority instead of engaging the new/fresh hands. Permanent work is available with the respondent. His services have been disengaged with a view that he (petitioner) does not become entitled to regularization as per the policy of the Government. The services of one Shri Devinder Kumar were also terminated alongwith him (petitioner) by the respondent. Shri Devinder Kumar raised an industrial dispute. He was ordered to be reinstated by this Court. A Writ Petition against the Award of this Court was preferred by the respondent before the Hon’ble High Court of Himachal Pradesh. The same was rejected. Shri Devinder Kumar has been re-engaged and regularized. He is junior to him (petitioner). Apart from it, Shri Dina Nath, Shri Duni Chand and Shri Yashodan, who are junior to him (petitioner), are working with the respondent. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, he (petitioner) prays that the verbal termination order dated 16.3.2k be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is hit by the vice of delay and laches. The same is not maintainable as no legal or vested right of the petitioner/claimant has been infringed.

On merits, it has been owned that the services of the petitioner were engaged as a beldar on daily wage basis w.e.f. 27.12.1989. He did not work up-to 15.3.2000 as claimed. No fictional breaks were ever given to the petitioner. The petitioner worked up-to 25.7.1994. He used to attend his duties in a very casual manner and generally remained absent. He was not on the rolls of the Board during the years 1995 to 1999. After 25.7.1994 the petitioner was not on his (respondent's) rolls up-to 21.2.2000. On 16.2.2000, when the work of restoration of electric supply was required to be done, the petitioner was called for work per letter of even date. In the letter dated 16.2.2000, it was made clear that the work is for specific period and short term as well as on the completion of the specific work, his (petitioner's) engagement will automatically come to an end. In view of the letter dated 16.2.2k, no notice was required to be served upon the petitioner before his disengagement. The petitioner was only a casual worker. He never remained in continuous employment. The petitioner did not complete 240 days of work in any calendar year of his engagement. His services have not been terminated as alleged. No person junior to the petitioner has been retained in service or engaged/re-engaged. The petitioner was in the habit of leaving the job of his own. He remained a casual worker and could not attain the status of a temporary workman. During the relevant period, in order to meet exigency of work, 16 persons who were already working in Electrical Sub Division, HPSEB, Padhar (Electrical Division, Joginder Nagar) were temporarily deputed to accomplish the time bound work. Those 16 beldars have since been reverted to their original Sub Division, Padhar, after the completion of the work. The petitioner cannot claim any preference over the 16 beldars as he himself left the job in the month of July, 1994. Moreover, the workmen, who were called from Padhar Sub Division, are no longer working under him (respondent). Work of permanent nature is not available with him (respondent). The Government of Himachal Pradesh has imposed a complete ban on the deployment of the labour on daily wage basis and on part time basis. As and when the ban is lifted and the work is available, the services of the petitioner will be re-engaged as per his seniority. No provision of the Act has been infringed. Since the petitioner left the job of his own he is not entitled to any protection under the Act. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been disputed that he worked up-to 25.7.1994 only. He never absented from his duties. Breaks were given to him by the respondent malafidely. His services were not engaged for any specific work or particular period. He never abandoned the job.

5. Per order dated 04.10.2012, following issues were struck.

1. Whether the services of the petitioner have been terminated by the respondent w.e.f. 16.3.2000 wrongly and illegally as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? .. OPR.
4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes  
 Issue No.2 : Not pressed  
 Issue No.3 : No  
 Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### **Issue No.1**

8. The petitioner Shri Lal Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he used to absent from his duties and did not work even for a single day in the years 1995 to 1999. He also denied that on 16.2.2000, he was called by the respondent for a specific work and he did not complete 240 days of work in any year of his employment. Further, he denied that his services were not terminated by the respondent/Board and no person junior to him is working.

9. Conversely, Shri B.R. Thakur, Assistant Engineer, Electrical Division, HPSEB, Gohar testified as RW1. He corroborated on oath the contents of the reply submitted by the respondent. He also stated that in the year 2000, the petitioner was called for a specific work which was to continue for 15 days. On the completion of the work, the services of the petitioner were disengaged.

In the cross-examination, he admitted that the seniority list is maintained at the Divisional level. Shri Manoj Kumar is junior to the petitioner. He cannot produce any record to show that in the year 2000, the services of the petitioner were engaged for a specific work. He denied that he has given a phoney statement.

10. No reference has been received from the appropriate Government regarding providing the fictional breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

11. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily waged beldar on 27.12.1989. The version of the petitioner is that he served as such up-to 15.3.2000. On this aspect of the matter, the respondent has pleaded that the petitioner worked only up-to 25.7.1994. After that, per letter dated 16.2.2000, he was called for a specific work of short duration. His (petitioner's) services automatically came to an end on the completion of the said work.

12. The copy of the letter dated 16.2.2000 written by the respondent to the petitioner is there on the record. Its perusal discloses that the services of the petitioner were engaged for 15 days for the maintenance of electric supply lines damaged due to snow fall at Janjehli and its surrounding area. This letter has not been exhibited on the record. The mandays chart of the petitioner, which is there on the file, goes to show that he served the respondent/Board intermittently from 27.12.1989 to 15.3.2000.

13. As already mentioned, the version of the respondent is that the services of the petitioner were engaged per letter dated 16.2.2000 for a specific work of short duration. His (petitioner's) services were to come to an end automatically on the completion of the said work. At the cost of reiteration, I will like to add that the letter dated 16.2.2000 has not been

proved/exhibited by the respondent. Rather, Shri B.R. Thakur, (RW1) during his cross-examination stated that he has not brought any record to show that in the year 2000, the services of the petitioner were engaged for a particular work.

14. Mandays chart relating to the petitioner goes to show that he did not complete 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 16.3.2000 as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. RW1 admitted that Shri Manoj Kumar is junior to the petitioner. He is still serving the respondent/Board. This indicates that the respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Section 25-G of the Act. For the said reason the termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Section 25-G of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date of his termination.

16. This issue is decided in favour of the petitioner and against the respondent.

### **Issue No. 2**

17. Not pressed

### **Issue No. 3**

18. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

19. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in Liaq Ram Versus State of H.P. & others, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

20. While testifying in the Court as PW1, the petitioner has given his age as 43 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. Moreover, in the claim petition there is no whisper to the effect that from the date of his disengagement the petitioner is unemployed and is having no source of income. For these reasons, he is not entitled to the back wages.

21. This issue is also decided in favour of the petitioner and against the respondent.

### **Relief (Issue No. 4)**

22. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the

seniority and continuity in service from the date of his illegal termination i.e. 16.3.2000 except back wages. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of January, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 101/2010  
Date of Institution : 23.4.2010  
Date of Decision : 17.01.2013**

Shri Man Singh s/o Shri Sauju Ram, r/o VPO Bayla, Tehsil Sunder Nagar, Distt. Mandi, H.P.

..Petitioner.

*Versus*

Management of Himachal Dental College, Sunder Nagar, Distt. Mandi, H.P.

.. Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. K.S. Guleria, Adv.

For the Respondent : Sh. A.C. Chandel, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of the services of Sh. Man Singh S/O Sh. Sauju Ram, workman by the management of Himachal Dental College Sunder Nagar, Distt. Mandi, w.e.f. 07.9.2009 without complying the provisions of section 25-F & 25-G of the Industrial Disputes Act, 1947 and whereas workmen junior to him are still working in the college, as alleged by the workman, is legal and justified? If not, to what back wages, service benefits and relief the above worker is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged Sweeper (Safai Karamchari) by the respondent in the month of April, 2004. He served as such upto 07.9.2008. On the said date his services were terminated by the respondent by a verbal order. Before the termination of his services, neither any

notice was given nor the retrenchment compensation was paid. He has been victimized. He had completed 240 days of work in each and every calendar year of his engagement. He was always ready to work. During the period of his employment, fictional breaks were provided to him by the respondent. Sufficient work is available with the respondent/employer. At the time of his retrenchment, persons junior to him namely Shri Pawan, Shri Tulsi, Smt. Champa Devi, Smt. Krishna and Smt. Meena Devi were retained in service by the respondent. His preferential right has been ignored. He has been removed from service by leveling the false allegation of absence from duty without any notice and inquiry. No casual cards and seniority list etc. were issued in his favour by the respondent. The latter has failed to adhere to the principle of 'last come first go'. From the date of his termination, he is not gainfully employed. The act and conduct of the respondent is illegal and unjustified. It is also violative of the various provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, he (petitioner) prays that the illegal retrenchment order dated 07.9.2008 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. It filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objection has been taken to the effect that the claim petition is not maintainable in the present form.

On merits, it has been denied that the services of the petitioner were engaged as a daily waged Safai Karamchari in the month of April, 2004. The petitioner never remained its (respondent's) employee. Shri Pawan etc. are the employees of the college. No vacancy is available in the college for the petitioner. Since the petitioner never remained on the rolls of the college in any capacity, the question of the termination of his services does not arise. No casual card etc. was required to be issued in the name of the petitioner. No person junior to the petitioner has been retained in service or engaged/re-engaged. The petition is false and frivolous. It has been instituted to unduly harass it (respondent). The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 10.5.2011, following issues were struck by my ld. Predecessor:-

1. Whether the termination of the petitioner w.e.f. 07.9.2008 is violative of provision of Sections 25-F and 25-G of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? ..OPP.
2. Whether the reference is not maintainable as alleged. If so, to what effect? ..OPR.
3. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Yes

Relief. : Claim petition dismissed vide operative portion of the Award.

## REASONS FOR FINDINGS

**Issues No.1 and 2**

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Shri Man Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he never served the respondent and has instituted a phoney petition. He feigned ignorance about the fact that Smt. Champa Devi etc. are the permanent employees of the respondent/management and their record is maintained by the college.

10. Smt. Gangi Devi (PW2) and Shri Joginder Singh (PW3) lent credence to the cause of the petitioner. Ex. PW2/A is the affidavit furnished by PW2 in terms of Order 18 Rule 4 CPC.

In the cross-examination, PW2 stated that she has retired from service. As and when she went to attend to her duties in the morning and came back in the evening her presence was marked by the respondent. She admitted that her name was there in the list of employees maintained by the respondent. The receipt of salary paid to her was also taken. PW3 admitted that he is the Secretary of the Employees Union of the college. He denied that to bring the name of the union in limelight, he has deposed falsely. PW2 also denied that she is telling the lies.

11. Conversely, Shri Mani Mahesh (an employee of the respondent) testified as RW1. In his affidavit Ex. RW1/A submitted in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply preferred by the respondent.

In the cross-examination, he denied that the petitioner was employed as a Safai Karamchari in the college.

12. No reference has been received from the appropriate Government regarding providing the artificial/fictional breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

13. Since the petitioner/claimant has approached the Court for the grant of various reliefs, a duty is cast upon him to firstly prove that the relationship of employer and employee/workman existed between the parties. The petitioner has not placed on the file any document evidencing that his services were engaged by the respondent in the month of April, 2004 as claimed. The evidence available on the record goes to show that the respondent/management maintains the record of its employees. As already mentioned, no document in the shape of appointment letter etc. has been produced by the petitioner to show that he was employed by the respondent.

14. It is often said and rightly too that the men may tell lies but the documents do not. It is trite that the documentary evidence as compared to the oral evidence has to be given weight. For want of documentary evidence/proof, I have no hesitation to conclude that the services of the petitioner were never engaged by the respondent in any capacity. No relationship of master and servant existed between the parties. Consequently, the question of the termination of the services of the petitioner by the respondent does not arise. The claim petition is not maintainable. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim. He is not entitled to any relief.

15. Otherwise too, the alleged termination of the services of the petitioner by the respondent w.e.f. 07.9.2009 (as per the reference) has not been challenged by him. The statement of claim/demand and the deposition made by the petitioner (PW1) go to show that he has questioned the alleged illegal termination by the respondent w.e.f. 07.9.2008. No retrenchment/termination order was ever passed by the respondent on that day.

16. These issues are decided against the petitioner and in favour of the respondent.

### **Relief (Issue No. 3)**

17. Taking into account my findings on the issues No.1 and 2 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3000/-.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of January, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

### **IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 142/2006  
Date of Institution : 30.8.2006  
Date of Decision : 21.01.2013**

1. Shri Narinder Kumar s/o Shri Durga, r/o Village Dwarn, P.O. Dehar, Tehsil Sunder Nagar, District Mandi, H.P.
2. Shri Bengali Ram s/o Shri Mohan, r/o Village Lathayani, P.O. Baroti, Tehsil Sunder Nagar, District Mandi, H.P.
3. Shri Beli Ram s/o Shri Garja Ram, r/o Village Ropa, P.O. Khural, Tehsil Sunder Nagar, District Mandi, H.P.
4. Shri Bangali Ram s/o Shri Gurdittu, r/o Village Jamthal, P.O. Harnora, Tehsil Sadar, District Bilaspur, H.P. (now dead) through his legal representatives:-
  - (i) Smt. Kala Devi d/o Shri Bangali Ram w/o Sh. Prem Lal, r/o Village Guddi, P.O. Salwana, Tehsil Sundernagar, Distt. Mandi (HP).
  - (ii) Smt. Sanehru Devi d/o Shri Bangali Ram wd/of Sh. Bangali Ram, r/o Village Chamlog, P.O. Deoli, Tehsil Sadar, Distt. Bilaspur, (HP)
  - (iii) Smt. Rupa Devi d/o Sh. Bangali Ram w/o Sh. Budhi Ram, r/o Village Kohal, P.O. Dobha, Tehsil Sadar, Distt. Bilaspur (HP)

(iv) Smt. Roshani Devi d/o Sh. Bangali Ram w/o Sh. Parkash Chand, r/o Village Jurasi, P.O. Dobha, Tehsil Sadar, Distt. Bilaspur, (HP)

5. Shri Govinda s/o Shri Gurdittu, r/o Village Jamthal, P.O. Harnora, Tehsil Sadar, District Bilaspur, H.P.
6. Shri Dinesh Kumar s/o Shri Kakh, r/o Village Jerakh, P.O. Dhar-Tatoh, Tehsil Sadar, District Bilaspur, H.P.
7. Shri Jagdish Kumar s/o Shri Banshi Ram, r/o Village Bagaun, P.O. Panjgai, Tehsil Sadar, District Bilaspur, H.P.
8. Shri Ramesh Chand s/o Shri Krishanu, r/o Village & P.O. Kangoo, Tehsil Sunder Nagar, District Mandi, H.P.
9. Shri Gauri Shankar s/o Shri Laungu Ram, r/o Village Jangle-Jhaleda, P.O. Kandraur, Tehsil Sadar, District Bilaspur, H.P.

*..Petitioners.*

*Versus*

1. The General Manager, A.C.C. Barmana, District Bilaspur, H.P.
2. Shri Bant Singh Chandel, Contractor, A.C.C. Barmana, District Bilaspur, H.P.

*..Respondents.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner(s) :      Sh. B.S. Verma, Adv.  
                                      Sh. R.K. Raghu, Adv.

For the Respondent No.1 : Sh. T.M. S. Liberhan, Adv.

For the Respondent No.2 : Sh. Sarpal Singh Thakur, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether the termination of services of (1) S/Shri Narinder Kumar S/O Shri Durga (2) Bangali Ram S/O Shri Mohan (3) Beli Ram S/O Shri Garja Ram (4) Bangali Ram S/O Shri Gurdittu (5) Govinda S/O Shri Gurdittu (6) Dinesh Kumar S/O Shri Kakh (7) Jagdish Kumar S/O Shri Banshi Ram (8) Ramesh Chand S/O Shri Krishanu (9) Gauri Shankar S/O Shri Laungu workmen by the (1) The General Manager, A.C.C. Barmana, District Bilaspur, H.P. (2) Shri Bant Singh Chandel, Contractor, A.C.C. Barmana, District Bilaspur, H.P. w.e.f. 01-10-99 without complying the provisions of the Industrial Disputes Act, 1947 as alleged by the workmen is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workmen are entitled to?”

2. The case of the petitioners (as set out in the statement of claim/demand) is that their services were engaged by the respondents/management on different dates/years as detailed below:-

Sr. No.	Name	Date of engagement
(i)	Narender Kumar s/o Sh. Durga	3.8.97
(ii)	Bangali Ram s/o Sh. Mohan	1988
(iii)	Beli Ram s/o Sh. Garja	1989

(iv)	Bangali Ram s/o Sh. Gurdittu (Deceased)	1989
(v)	Govinda s/o Sh. Gurdittu	1990
(vi)	Dinesh Kumar s/o Sh. Kakh	1997
(vii)	Jagdish Kumar s/o Sh. Banshi Ram	1991
(viii)	Ramesh Chand s/o Sh. Krishanu	1991
(ix)	Gauri Shankar s/o Sh. Laungu	1997

3. They (petitioners) served to the satisfaction of their superiors and no complaint was received against them during the period of their employment. On 1<sup>st</sup> October, 1999, their services were terminated by the respondents without assigning any reason. Neither any notice was given to them nor the retrenchment compensation was paid. They worked for more than 240 days in a block of 12 calendar months preceding the date of their termination. At the time of the termination of their services, the persons junior to them were retained in service by the respondents. The latters failed to abide by the principle of 'last come first go'. The work is still available with the respondents. They (respondents) are regularly engaging the workers after their (petitioners') disengagement. From the date of the retrenchment of their services, they are unemployed. The termination of their (petitioners) services by the respondents has made their integrity doubtful in the eyes of others. They tried their level best to secure the employment somewhere else, but in vain. The act and conduct of the respondents is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G, 25-H and 25-N of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, they (petitioners) pray that the verbal termination order dated 01.10.1999 be set aside. The respondents be directed to reinstate them in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

4. On notice, the respondents appeared. They submitted separate replies controverting the averments made in the petition/statement of claim. The respondent No.1 in his reply has taken the preliminary objections to the effect that as per his information, the petitioners were more than 60 years of age in the year 1999. They are neither the workmen nor are covered within the definition of retrenchment. The claim petition is not maintainable. Shri Bangali Ram s/o Shri Gurdittu (petitioner No.4) was above 60 years of age on the date of the reference. He has already died. His legal heirs have been brought on the record. They are not entitled to the relief(s) sought in the claim petition. The petition has been instituted at a very late stage. It is time barred. No relationship of employer and employee exists between him (respondent No.1) and the petitioners. Infact, such relationship never existed because of which the provisions of the Act are not applicable. He (respondent No.1) was never the employer of the petitioners at any point of time. Section 2 (k) of the Act is not applicable. This Court/Tribunal has no jurisdiction to entertain and decide the claim petition.

On merits, it has been denied that the services of the petitioners were engaged by him (respondent No.1) as alleged. No relationship of master and servant exists between the parties. Since the petitioners were never employed by him, they did not work under him at any point of time. As the services of the petitioners were never engaged by him (replying respondent), the question of the illegal termination of their services does not arise. The petitioners did not work for more than 240 days as claimed. Neither any notice was required to be given to them nor the retrenchment compensation was to be paid. No provision of the Act has been infringed. The question of integrity of the petitioners becoming doubtful does not arise. The claim petition is false and frivolous.

In these circumstances, the respondent No.1 prays that the petition in hand be dismissed with costs.

5. The respondent No.2 in his reply has raised the preliminary objections to the effect that some of the petitioners were much more than 60 years of age in the year 1999. They are neither the workmen nor were retrenched as defined in the Act. The claim petition is not maintainable. The petitioner No.4 has already expired. His legal heirs are not entitled to the reliefs claimed. The petition is hit by the law of limitation. The petitioners are estopped from filing the claim petition by their act and conduct.

On merits, it has been pleaded that the respondent No.1 had awarded the contract of plantation for a specific period to him (respondent No.2). He engaged the services of the petitioners for the said specific work being a contractor of the respondent No.1. The petitioners were appointed for the horticulture mission i.e. the plantation for a particular duration. Plantation work is periodical. For these reasons, the contract of plantation was given to him (respondent No.2) by the respondent No.1 for a specific period. The services of the petitioners automatically came to an end on the completion of the work/contract. No work undertaken by him (replying respondent) is continuing at present. After the completion of the contract period the petitioners voluntarily left the services. The said fact has been admitted by the petitioners/claimants in the applications submitted by them before him (respondent No.2) for the release of their EPF. Such applications were forwarded to the EPF authorities and the petitioners got their EPF released. They are estopped for filing the claim petition by their act, conduct, omissions, commissions and deeds. After the completion of the plantation work, which was for a specific duration, no worker has been retained in service by him (respondent No.2). The services of the petitioners have not been terminated in a wrongful manner as claimed. No provision of the Act has been flouted. He was only a contractor of the respondent No.1 who was given the contract of plantation for a particular period/duration. The claim petition is false and baseless. The petitioners are not entitled to any relief.

As such, the respondent No.2 too prays that the instant petition be dismissed with costs.

6. In the rejoinders, the petitioners have reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been maintained that the respondent No.1 being a principal employer cannot escape liability. Their (petitioners') services were engaged by the respondent No.1 through the respondent No.2. They were not employed for any specific work or duration. Before their (petitioners') engagement there was no agreement that they were going to be engaged for a particular work or only plantation mission. EPF was deducted from their salaries till their illegal termination.

7. Per order dated 08.1.2010, following issues were struck by one of my ld. Predecessors:-

1. Whether the services of the petitioners were terminated by the respondent w.e.f. October 1, 1999? ..OPP.
2. If the above issue 1 is proved, whether the termination of services of the petitioners by the respondent is unlawful. If so, what relief the petitioners are entitled to? ..OPP.
3. Whether the claim petition is not maintainable? ..OPR.
4. Relief.
8. I have heard the ld. counsel/AR for the parties and have gone through the case file.
9. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : No

Issue No.3 : Yes

Relief. : Claim petition dismissed vide operative portion of the Award.

## REASONS FOR FINDINGS

### **Issues No.1 to 3**

10. Being interlinked and to avoid the repetition, all these issues are taken up together for discussion and disposal.

11. Shri Narender Kumar (petitioner No.1) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also stated that his services were engaged by the ACC Factory (respondent No.1) in the Horticulture Department.

In the cross-examination, he admitted that he has no appointment letter issued by the respondent No.1/Company. He admitted that the salary was being paid to him by Shri B.S. Chandel (respondent No.2). He denied that the EPF also used to be deducted by the respondent No.2 from his pay. He admitted that Ex. R1 i.e. the copy of the register of wages maintained by the respondent No. 2 bears his signatures. He denied that his services were engaged by the respondent No.2 who was awarded the contract of plantation by the respondent No.1. He admitted that he (PW1) had moved an application for withdrawing the EPF amount. Ex. R2 is the copy of that application. He admitted that in the application, he had mentioned the EPF account number as well. Self stated, it has been wrongly written in the application that he has left the service voluntarily. He never lodged any complaint to the effect that the contents of the application are incorrect. He denied that his services were never engaged by the respondent No.1/Company. He admitted that the respondent No.2 (Contractor) has no independent work. The respondent No.2 used to do only that work on contract basis which was provided to him by the respondent No.1. He denied that the plantation work is seasonal and the contract of plantation awarded to the respondent No.2 came to an end in the year 1999. He admitted that he worked with several contractors. He denied that his services automatically came to an end on the completion of the contract/plantation work. He also denied that he left the job of his own.

12. Petitioner No.2 Shri Bangali Ram, petitioner No.8 Shri Ramesh Chand, petitioner No.5 Shri Govinda, petitioner No.6 Shri Dinesh Kumar and petitioner No.7 Shri Jagdish Kumar testified as PWs 2 to 6. Exts. PW2/A, PW3/A, PW4/A, PW5/A and PW6/A are the affidavits furnished by them as per Order 18 Rule 4 CPC. Their statements are similar to the one made by PW1. All these witnesses admitted that Ex. R1 i.e. the copy of the wages register bears their signatures. They also admitted that they had moved the applications the copies of which are Exts. R3, R8, R5, R6 and R7, for withdrawal of the EPF.

13. Conversely, Shri Sanjay Kumar, Manager-HR, ACC Limited Gagal Cement Works, Barmana (respondent No.1) testified as RW1. In his affidavit Ex. RW1/A submitted as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he stated that the work was provided to the respondent No.2 (Contractor) for a specific period. The respondent No.2 was not having any independent work. He used to do only that work which was awarded to him (respondent No.2) by the Company. He admitted that the work of plantation of trees was awarded by the Company to the respondent No. 2. When the said work was completed, the services of the persons engaged by the respondent No. 2

automatically came to an end. He admitted that thereafter no plantation work was allotted by the Company (respondent No.1) to the respondent No. 2. He denied that the petitioners worked from the year 1988 to 1999. Self stated, they served from the year 1997 to 1999 only. He admitted that the 'malies' and labourers look after the plantation area of the Company even today. Volunteered, the Company has its own horticulture department in which permanent employees are working. He admitted that the contract of plantation was given by the respondent No.1 to the respondent No.2 for the first time in the year 1997. He denied that earlier to the year 1997, the Company used to employ the labour directly for the plantation and other works. He even denied that the services of the petitioners were engaged by the respondent No.1/Company. Further, he denied that the EPF of the petitioners used to be deducted by the Company. The amount of EPF was deposited in the account of the respondent No.2. He admitted that the Company (respondent No.1) is in need of the labour even today and the labour is engaged through the contractors.

14. Shri Jai Lal (RW2) is Secretary, Gram Panchayat Dhawal. He brought the record and deposed that Shri Belia Ram s/o Shri Garja Ram (petitioner No. 3) was born on 24.3.1950 as per the parivar register.

15. Shri Kanshi Ram (RW3) is Secretary, Gram Panchayat, Dehar. He too brought the record and stated that the name of the petitioner No.1 Sh. Narendra Kumar is not there in the register of births and deaths as well as the family register.

16. Shri Subhash (RW4) is Secretary, Gram Panchayat, Baroti. He testified that as per the parivar register Shri Bangali Ram s/o Shri Mohan (petitioner No.2) was begotten in the year 1940.

17. Exts. RW1/B to E are the copies of different letters written by the respondent No.1 to the respondent No.2. They unfold that the job of development and plantation was provided by the respondent No.1 to the respondent No. 2 on contract basis from 01.1.1997 to 31.3.1997, 01.4.1997 to 31.5.1997, 01.10.1998 to 31.12.1998 and 01.1.1999 to 31.3.1999.

18. Exts. RA and RB are the age/birth certificates relating to the petitioners No.4 and 5. They reveal that the petitioner No.4 was born on 15.9.1940 whereas the petitioner No.5 took birth in the year 1948.

19. RW5 is Shri Bant Singh Chandel (respondent No.2). In his affidavit Ex. RW5/A submitted under Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply preferred by him.

In his cross-examination, he admitted that the work of plantation and re-claiming the mining area, where the mining work was complete, was allotted to him on contract basis by the respondent No.1. He also admitted that all the petitioners were employed by him as labourers and he used to pay the salary to them. Further, he admitted that during those days, he was not having the EPF code. Due to the said reason, the provident fund which was being deducted from the salaries of the petitioners was deposited by him in the account of the respondent No.1/Company. He admitted that on the completion of the contract period, the petitioners had moved the applications (the copies of which are Ex. R2, R3 and R5 to R8) for withdrawal of the amount of the EPF. On the basis of these applications, the EPF amount was withdrawn by the petitioners. He admitted that before the termination of services of the petitioners no notice was given to them. Self stated, he used to work periodically on contract basis. As and when any workman was employed by him he used to tell him that his services will automatically come to an end on the completion of the contract period. He denied that Shri Bangali Ram s/o Shri Mohan (petitioner No.2) served under him from the year 1988 to 1999. He does not remember the period during which the petitioners worked with him. Volunteered, he was registered as a contractor in the year 1996. He denied that he has given a phoney statement.

20. Since the petitioners have approached this Court/Tribunal for the grant of various reliefs, a duty is cast upon them to prove their case.

21. In the rejoinder to the reply of the respondent No.1, the petitioners have categorically pleaded that the respondent No.1 is the principal employer because of which he cannot escape the liability. PWs 1 to 6 in their crossexamination admitted that the salary used to be paid to them by Shri Bant Singh Chandel (respondent No.2). The pleas taken by the petitioners are mutually destructive. They have not produced any record to show that their services were engaged by the respondent No.1 as claimed. Infact, no relationship of master and servant exists between the respondent No.1 and the petitioners.

22. The Act does not prohibit fixed term contract of employment. A person employed by the contractor does not become the direct employee of the principal employer. The contract labour does not become the workman of the principal employer on the ground of supposed infringement of the provisions of the Act.

23. From the evidence available on the record, it can be gathered that Shri Bant Singh Chandel (respondent No.2) was registered as a contractor in the year 1996. The plantation work in the Company premises was provided to him from time to time by the respondent No.1 on contract basis. The services of the petitioners were engaged by the respondent No.2 and the same were coterminus with the completion of the contract period/plantation work. Since the respondent No.2 was registered as a contractor in the year 1996 and the work on contract basis was provided to him thereafter by the respondent No.1, the question of his engaging the petitioners anterior to the year 1996 (as claimed) does not arise. As already mentioned, the petitioners have not produced any document evidencing that they were employed by the respondent No.1/Company at any point of time. Admittedly, the petitioners had moved various applications for withdrawal of the EPF amount. The copies of those applications are Exts. R2, R3 and R5 to R8. In these applications the petitioners have clearly mentioned that they were employed by the respondent No.2 and have voluntarily left the services because of which they are withdrawing the amount(s) of the EPF. In view of the contents of the applications, I am at a loss to understand as to how it lies in the mouth of the petitioners to say that their services were engaged by the respondent No.1 and were wrongly terminated by the Company/respondent No.1 (as alleged).

24. From the statement made by the respondent No.2 (RW5), it can be gathered that he was not having the EPF code. Due to this reason, the EPF deducted from the salary of the petitioners was deposited by him in the account of the respondent No.1/Company. The contract of plantation awarded by the respondent No.1 to the respondent No.2 came to an end in the year 1999. The respondent No.2 (RW5) has deposed that as and when he engaged the services of anyone, he used to tell him/her that the services will automatically come to an end on the completion of the work/contract period.

25. It appears to me that the petitioners are telling nothing else except a bundle of lies. As mentioned earlier the pleas taken by them are mutually destructive. Some of the petitioners have already attained the age of superannuation. From the contents of the petition/statement of claim and the evidence available on the record, it can be gathered that at the time of the alleged engagement of the services of the petitioners by the respondent No.1, the petitioners No.1 and 5 were approximately 17 years of age whereas the petitioners No. 7 and 8 were only 13 years old. The question of employing the children/minors by the respondent No.1 in the Company does not arise.

26. At the cost of reiteration, I will like to add that there is no cogent and convincing evidence on the record to show that the services of the petitioners were engaged by the respondent No.1 as claimed. They were employed by the respondent No.2 for a specific work which was

awarded on contract basis to him by the respondent No.1/Company. The services of the petitioners were to come to an end on the completion of the contract period/work. The petitioners have not disclosed the name of any person junior to them who was retained in service by the respondent No.2 at the time of their alleged disengagement. They (petitioners) have also not disclosed the name of any person who was employed by the respondent No.2 after the alleged termination of their services. The provisions of Sections 25-G and 25-H of the Act are not attracted in this case. Rather, from the statement made by RW1 (Shri Sanjay Kumar), it becomes clear that the work of plantation on contract basis was provided by the Company for the first time to the respondent No.2 in the year 1997. After the completion of the said work, no work of plantation was awarded by the respondent No.1 to the respondent No.2. RW-1 also deposed that the petitioners worked under the contractor from the year 1997 to 1999 only.

27. So far as the provisions of Sections 25-F and 25-N of the Act are concerned, the same are also not attracted in this case in view of the evidence available on the file. Moreover, as already mentioned in the application for withdrawal of EPF amount, the applicants/petitioners clearly mentioned that they had left the job of their own. If the said recitals made in the applications are wrong and incorrect then why the petitioners did not agitate the said fact earlier? The reasons to that effect being obscure go to show that the petitioners are not telling the truth. The disengagement of the services of the petitioners by the respondent No.2 does not amount to retrenchment as per Section 2 (oo) (bb) of the Act. 28. To my thinking, the avarice of the petitioners to grab the job(s) and money has forced them to file a totally false and baseless claim. They are not entitled to any relief. The claim petition is not maintainable.

29. These issues are decided against the petitioners and in favour of the respondents.

#### **Relief (Issue No. 4)**

30. As a sequel to my findings on the issues No.1 to 3 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs.3000/-.

31. The reference is answered in the aforesaid terms.

32. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

33. File after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of January, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

#### **IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 115/2011  
Date of Institution : 27.8.2011  
Date of Decision : 17.01.2013**

Shri Puran Chand s/o Shri Param, r/o Village Shiva Badar, Tehsil Sadar, District Mandi, H.P.

..Petitioner.

*Versus*

The Executive Engineer, I. &amp; P.H. Division, Mandi, District Mandi, H.P

..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Abhishek Lakhpal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination by verbal orders of the services of Shri Puran Chand S/O Shri Param by the Executive Engineer, I.&P.H. Division, Mandi, District Mandi, H.P. w.e.f. August, 2004 without serving advance notice, without paying compensation, without holding enquiry, thus without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what amount of back wages, past service benefits and relief the above workman is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent in the year 1996. He worked in Panarsa Sub Division up-to the year 2004. In the month of August, 2004, his services were wrongly and illegally terminated by the respondent by passing a verbal order. Before the termination of his services, neither any notice was given to him nor the retrenchment compensation was paid. During the course of his employment, he worked to the entire satisfaction of his superiors and completed 240 days of work in each and every calendar year of his engagement. At the time of the termination of his services, the persons junior to him were retained in service by the respondent. The latter failed to adhere to the principle of ‘last come first go’. Not only this, after his disengagement, new/fresh hands have been engaged by the respondent. Some of his (petitioner’s) colleagues and juniors have already been regularized by the respondent. Enough work and funds are available with the respondent to re-employ him. He served without any break. The act and conduct of the respondent is illegal and unjustified. It is also violative of various provisions of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

- “A. That the oral and illegal termination order passed against by the applicant may be set aside and respondents be directed to re-engage/reinstate the applicant continuously with back wages and all consequential benefits.
- B. That the period of interrupted service may be counted towards continuous service and respondents/employers may be directed to consider the period of his continuous service for the purpose of work charge/regular status in accordance with the judgments of the Hon’ble Apex Court in this behalf with all consequential benefits”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner

has been infringed. The petition is bad on account of delay and laches on the part of the petitioner/claimant.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager in the month of January, 1996. The petitioner used to report for duty as per his convenience. He served intermittently up-to the month of August, 2004 with complete absence in the years 2000 to 2003. The petitioner never worked for 240 days in any calendar year of his employment except the year 1998. The services of the petitioner were never disengaged as alleged. Actually, in the month of August, 2004, the petitioner abandoned the job of his own. Since the petitioner voluntarily left the service, he is precluded from claiming the parity with any other workman. The instant industrial dispute has been raised by the petitioner at a belated stage per demand notice dated 12.11.2009. The petitioner has not disclosed the name of any person junior to him who was retained in service. The principle of 'last come first go' was duly followed. The petitioner is gainfully employed as a beldar after he abandoned the job. The petition is devoid of any merit. The petitioner is not entitled to any relief. No provision of the Act has been flouted.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been preferred by the petitioner.
5. Per order dated 06.6.2012, following issues were struck.
  1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP.
  2. Whether the petition is not maintainable in the present form? ..OPR.
  3. Whether the petition is bad on account of delay and laches on the part of the petitioner? ..OPR.
  4. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-
 

Issue No.1 : Yes  
 Issue No.2 : Not pressed  
 Issue No.3 : No  
 Relief : Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### **Issue No.1**

8. The petitioner Shri Puran Chand stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also stated that after the termination of his services he is not gainfully employed.

In the cross-examination, he admitted that he served the respondent intermittently. He denied that he left the job of his own in the month of August, 2004. He makes both the ends meet by doing the work of agriculture and private job.

9. Conversely, Shri P.C. Thakur, Executive Engineer, I&PH Division Mandi (respondent) testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply submitted by him.

In the cross-examination, he admitted that the petitioner had joined as a daily wager on 01.1.1996. He also admitted that the persons junior to the petitioner are working under him (RW1). As per the record, no notice was given to the petitioner calling upon him to resume his duties after he left the job. Even no departmental proceedings were initiated against the petitioner. He admitted that the name of the petitioner does not figure in the seniority list Ex. RW1/D. Self stated, the seniority list pertains to only those workmen who worked continuously. He denied that the services of the petitioner were disengaged in a wrongful manner.

10. Ex. R1 is the copy of the demand notice dated 12.11.2009 served upon the respondent by the petitioner. It corresponds to Ex. RW1/C.

11. Ex. RW1/B is the mandays chart relating to the petitioner.

12. Ex. RW1/D is the seniority list in respect of the beldars working under I.&P.H. Division, Mandi, as on 31.12.2011.

13. Exts. RW1/E, F and G are the mandays charts of S/Sh. Tilak Raj, Mohinder Pal and Tara Chand, respectively.

14. No reference has been received from the appropriate Government regarding providing the artificial/fictional breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

15. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily wager on 01.1.1996 and he served intermittently up-to the month of August, 2004. The version of the petitioner is that in the month of August, 2004, his services were wrongly and illegally dispensed with by the respondent by a verbal order. While denying the said fact, the respondent has pleaded that the petitioner used to work as per his sweet will and convenience. In the month of August, 2004, he abandoned the job of his own accord and free volition.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty it cannot be presumed that he has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was given to the petitioner asking him to resume the work after he allegedly left his duties. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

17. The mandays chart Ex. RW1/B depicts that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date/month of his termination i.e. August, 2004 as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

18. It has come in the statement of the respondent (RW1) that the persons junior to the petitioner are still serving under him (respondent). The said fact finds support from the seniority list Ex. RW1/D. This indicates that the respondent has failed to abide by the principle of 'last come first go'. His action contravenes the provisions of Section 25-G of the Act. The termination of the

services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Section 25-G of the Act a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date/month of his termination.

19. This issue is decided in favour of the petitioner and against the respondent.

### **Issue No. 2**

20. Not pressed

### **Issue No. 3**

21. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

22. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in Liaq Ram Versus State of H.P. & others, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

23. The petitioner (PW1) in his cross-examination admitted that he earns his livelihood by doing the work of agriculture. He also works as a daily wager privately. While testifying in the Court as PW1, the petitioner has given his age as 47 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For these reasons, he is not entitled to the back wages.

24. This issue is also decided in favour of the petitioner and against the respondent.

### **Relief (Issue No.4)**

25. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. August, 2004 except back wages. Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of January, 2013.

RAJAN GUPTA  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 235/2010**  
**Date of Institution : 07.8.2010**  
**Date of Decision : 14.01.2013**

Shri Ravi Dass s/o Shri Hoshiyar Singh, r/o Village Lower Chauntra, Post Office, Chauntra, Tehsil Joginder Nagar, Distt. Mandi, H.P.

..Petitioner.

*Versus*

The Divisional Forest Officer Joginder Nagar, Distt. Mandi, H.P.

..*Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Ravi Dass S/O Sh. Hoshiyar Singh by The Divisional Forest Officer Joginder Nagar, Distt. Mandi (H.P.) w.e.f. 01.7.2009 without complying the provisions of section 25-F, 25-G & 25-H of the Industrial Disputes Act, 1947, as alleged by the workman, is proper and justified? If not, what amount of compensation, back wages and other service benefits the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were initially engaged as a daily wager on muster roll basis by the respondent in the year 2005. He served as such up-to 30.6.2009 and completed 240 days of work in each and every calendar year of his engagement. During the period of his employment, the respondent used to give him the fictional breaks from time to time so that he does not complete 240 days of work for the purpose of regularization. He never absented from his duties deliberately. His (petitioner's) services were engaged and disengaged by the Beat Officer and the Range Officer as per the directions of the respondent. During some years, he was appointed on bill voucher basis. Sometimes he received the payment on the muster roll basis and at occasions, the payment was made to him as per the bill voucher. At the time of his engagement, no appointment letter was issued in his name by the respondent. From the year 2005 to 30.6.2009, he was not given any casual card, wage slip or

attendance card by the respondent. On 12.4.2008 a demand notice was served upon the Conservator of Forests, Mandi Circle and the respondent by him. Copy of the demand notice was forwarded to the Labour-cum-Conciliation Officer, Mandi. On 17th March, 2009, a settlement under Section 12(3) of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) was arrived at between the parties. The terms of the settlement are as under:-

- (1) The employer/management side has stated in written reply dated 13.05.2008 that Mr. Ravi Dass above worker has worked as beldar on daily wages for 85 and 118 days during 2005 and 2007 respectively. The seniority of all daily wagers is made at division level. The above worker can be been employed as per his seniority with the whole jurisdiction of Joginder Nagar Forest Division, as per availability of work. He will be retrenched as per provision of Section 25-F and reemployed as per provision of section 25-G and 25-H of Ibid Act.
- (2) Mr. Ravi Dass above worker agrees to work anywhere, as per his seniority, within the whole jurisdiction of Joginder Nagar Forest Division, as per availability of work and it may be 8 Kms or more away from his permanent residence. He will report for duties on 6.04.2009 to the Block Forest Officer, Chauntra on 16.4.2009 at 9 AM.
- (3) Both the parties to the Industrial Disputes agree to above term of settlement at serial no.1 & 2 therefore this Industrial Disputes has been finally disposed".

3. On the basis of the settlement, his (petitioner's) services were reengaged by the respondent on 16.4.2009. He worked continuously up-to 30.6.2009 without any break and weekly off. If the work and funds are not available with the respondent/department, he (petitioner) cannot be blamed for the non-completion of 240 days of continuous service. He is duly covered under Section 25-B of the Act. On 01.7.2009, his services have been terminated once again by S/Sh. Trilok Chand and Anil Kumar (Forest Guards) by a verbal order as per the directions issued by the Range Officer and the respondent. At the time of the termination of his services, the person junior to him (petitioner) namely Shri Joginder Singh r/o Village Sarli was retained in service by the respondent. Shri Joginder Singh is still serving the respondent without any break. The respondent has failed to adhere to the principle of 'last come first go'. Not only this, after his disengagement new/fresh hands have been engaged by the respondent. He (petitioner) was not given an opportunity of re-employment. From the date of his retrenchment, he is unemployed. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act.

As such, he (petitioner) prays that the oral termination order dated 01.7.2009 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

4. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The petition is hit by the vice of delay and laches.

5. On merits, it has been owned that the services of the petitioner were engaged in the month of July, 2005. The petitioner worked intermittently as per the availability of the work and funds in various seasonal forestry works. He never completed 240 days of work in any calendar year of his engagement. In the month of August, 2006, the petitioner abandoned the job of his own. After that, he was reemployed w.e.f. 16.4.2009 pursuant to the settlement dated 17.3.2009. The petitioner then worked up-to 30.6.2009. Once again, he left the service voluntarily. The petitioner

did not respond to the notices dated 08.7.2009, 29.7.2009 and 18.12.2009 calling upon him to resume his duties. No artificial breaks were ever given to the petitioner. The services of the petitioner were engaged on account of various seasonal forestry works i.e. plantation and nursery etc. in Joginder Nagar Range. On the cessation of the season/work, he (respondent) had no option but to disengage the services of the petitioner alongwith the other similarly situated workmen. The petitioner and others used to be re-engaged as daily wagers with the start of the fresh season in the next year. The settlement dated 17.3.2009 was implemented in letter and spirit. The petitioner, who is gainfully employed, is/was not interested to work with him (respondent). Due to the said reason only, he abandoned the job and did not respond to the notices sent to him. The services of the petitioner were never disengaged as alleged. Since the petitioner left the job willingly, he is not entitled to any protection under the Act. Shri Joginder Singh is senior to the petitioner. No person junior to the petitioner has been retained in service or engaged/re-engaged. Even no new/fresh hands have been engaged. The principle of 'last come first go' was duly followed. No provision of the Act has been infringed. The petitioner is not entitled to any relief.

6. In these circumstances, the respondent prays that the petition in hand be dismissed.

7. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that the mandays shown by the respondent are incorrect. He (petitioner) also worked on bill voucher basis. He completed more than 240 days of work in each and every calendar year of his employment. Wage slip was not provided to him at the time of the payment in violation of the provisions of the Payment of Wages Act, 1936. He never abandoned the job. No notice was ever received by him. Shri Joginder Singh s/o Shri Kharku Ram has been re-appointed on muster roll basis by the respondent in the month of November, 2006.

8. Per order dated 03.11.2011, following issues were struck by my ld. Predecessor:-

1. Whether the disengagement of the petitioner w.e.f. 01.7.2009 is violative of the provisions of Sections 25-F, 25-G and 25-H of the I. D. Act as alleged. If so, what relief the petitioner is entitled to? ..OPP.
2. Whether the reference is not maintainable as alleged. If so, to what effect? ..OPR.
3. Whether the reference is hit by the vice of delay and laches as alleged. If so, to what effect? ..OPR.
4. Relief.

9. I have heard the ld. counsel/AR for the parties and have gone through the case file.

10. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : No

Issue No.2 : Not pressed

Issue No.3 : Not pressed

Relief. : Claim petition dismissed vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### **Issue No.1**

11. The petitioner Shri Ravi Dass stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the

petition/statement of claim in its entirety. He also placed on the record Ex. PW1/B i.e. a copy of the demand notice dated 03.7.2009 served upon the respondent by him.

In the cross-examination, he admitted that a compromise had taken place between him and the respondent in the year 2009. Its copy is Ex. R1. As per the settlement his services were re-engaged by the respondent in the month of April, 2009. He worked for approximately 2 ½ months in the year 2009. He denied that thereafter, he left the services willingly. He denied that Range Officer, Joginder Nagar had sent the notices dated 08.7.2009, 29.7.2009 and 18.12.2009 to him asking him to resume the work. He also denied that the receipt of the notices dated 08.7.2009 and 29.7.2009 was refused by him. Further, he denied that in the month of December, 2009 when the forest officials visited his residence alongwith the notice, his daughter met them who remarked that she will convey to him (petitioner) that his services are required in Chauntra nursery. He denied that the work in the forest department is seasonal and he abandoned the job because of which, he is not entitled to the re-employment etc. He refuted that Shri Joginder Singh etc. are senior to him and no breaks were ever given to him by the respondent. Nowadays, he is working in MANREGA Scheme. He denied that he has given a phoney statement.

12. Conversely, Shri P.L. Gupta, Divisional Forest Officer, Joginder Nagar (respondent) testified as RW5. In his affidavit Ex. RW5/A preferred in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him. He also placed on the record Ex. RW5/B i.e. the mandays chart relating to Shri Joginder Singh s/o late Shri Kharku Ram. In the cross-examination, he admitted that the services of the petitioner were engaged as a daily wager on muster roll basis in the year 2005. He denied that the services of the petitioner were earlier terminated in the year 2006. He admitted that the settlement Ex. R1 had taken place. No notice was given to the petitioner intimating him that if he fails to report for duty, departmental proceedings will be initiated against him and his services will be terminated. He denied that the services of the petitioner have been disengaged in a wrongful manner.

13. Shri Kamal Jaswal (RW1) is Range Forest Officer, Joginder Nagar. He stated that notice dated 18.12.2009 was issued in the name of the petitioner. Its copy is Ex. RW1/A. Shri Anil Kumar (Forest Guard) had approached the petitioner alongwith the notice. He made the report on the notice and returned the same. The original notice is there in the record which he (RW1) has brought to the Court. After that, a notice dated 27.11.2010 was sent to the petitioner under registered cover calling upon him to resume his duties. Such registered letter was also received back undelivered with the report that despite repeated attempts, the petitioner is/was not available and his family members informed the postman that he (petitioner) is out of station. Ex. RW1/B is the copy of the notice dated 27.11.2010. Ex. RW1/C is the postal receipt and Ex. RW1/D is the copy of the registered letter/envelop.

In the cross-examination, he stated that when the registered notice came back, he (RW1) sent a written report to the Divisional Forest Officer (respondent) intimating him that the petitioner has not joined his duties. The respondent did not pass any order for initiation of the disciplinary proceedings against the petitioner.

14. Shri Anil Kumar, Forest Guard (RW2) testified that notice dated 18.12.2009 was handed over to him by the Range Officer. Its copy is Ex. RW1/A. He (RW2) visited the house of the petitioner twice with the notice. On 19.12.2009, the mother of the petitioner met him (RW2). He told her that the petitioner is required to join his duties on 20.12.2009 and he (RW2) has brought the notice in this regard. The petitioner failed to join the duties on 20.12.2009. Thereafter, on 21.12.2009, he (RW2) again went to the house of the petitioner alongwith one Shri Joginder Singh. At that time the daughter of the petitioner met him (RW2). She informed him (RW2) that the petitioner has gone out of station due to some work. As and when he (petitioner) returns home,

she will tell him that he is required to join his duties in Chauntra nursery. Report in this regard was made by him (RW2) on the notice which was returned to the Range Forest Officer. The report was also signed by Shri Joginder Singh as a witness. In the cross-examination, he stated that he had gone with the notices to the houses of two workers. He admitted that 33 casual labourers work under him. The labourers are employed during the season and thereafter, their services are dispensed with.

15. Shri Chaman Lal (RW3) is the Forest Guard. He deposed that in the year 2009, he was posted as a Forest Guard in Upper Chauntra Beat. Notices dated 08.7.2009 and 29.7.2009 were issued by him. Their copies are Exts. RW3/A and B. The notices were sent to the petitioner asking him to report for work. He (RW3) had gone to the house of the petitioner personally with the notices in the company of Shri Love Kumar. The petitioner met them and refused to receive the notices on the pretext that he has been advised by his ld. counsel not to receive the same. The notices were signed by Shri Love Kumar as a witness.

In the cross-examination, he stated that the notices were issued to the petitioner taking into account his seniority. He denied that the seniors were not called to do the work.

16. RW4 is Shri Love Kumar, Forest Worker. He supported the version of RW3.

In the cross-examination, he denied that he never went to the house of the petitioner and being an employee of the respondent/department, he has given a phoney statement.

17. No reference has been received from the appropriate Government regarding providing the fictional breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

18. The respondent has not produced any record to show that the services of the petitioner used to be engaged as a casual labourer. The settlement dated 17.3.2009 (Ex.R1) and date of reengagement of the petitioner i.e. 16.4.2009 are not in dispute.

19. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager in the year 2005 and he served the respondent/department intermittently up-to 30.6.2009. The version of the petitioner is that on 01.7.2009, his services were wrongly and illegally terminated by the respondent by a verbal order. While denying the said fact, the respondent has pleaded that the petitioner abandoned the job of his own accord and free volition.

20. The contention of the respondent that the petitioner willingly left the service w.e.f. 1st July, 2009 appears to be true in view of the evidence available on the record. The respondent has placed/exhibited on the record the notices dated 08.7.2009, 29.7.2009 and 18.12.2009 which were sent to the petitioner calling upon him to resume his duties. The notices and the reports have been duly proved by RWs 1 to 4. It is not the case of the petitioner that any of the witness examined by the respondent is inimical to him. Legally speaking all official acts are presumed to be correctly performed. The depositions made by RWs 1 to 4 make it crystal clear that the petitioner refused to receive various notices and failed to join his duties despite intimation given to him from time to time. Many facts stated by RWs 1 to 4 regarding refusal to receive the notices when the forest officials visited the residence of the petitioner go un-rebutted and unchallenged during the crossexamination. Therefore, they are to be presumed as admitted by the petitioner. If the services of the petitioner would have been disengaged by the respondent (as alleged), the latter or his subordinates would not have issued various notices to the petitioner from time to time asking him to report for duty. The fact that the petitioner refused to receive the notices when he met the forest officials personally and failed to join the duties despite intimation given to his mother and daughter amply demonstrate that he is/was not interested to work.

21. Not only this, from the statement made by Shri Kamal Jaswal (RW1), it can be gathered that a notice dated 27.11.2010, the copy of which is Ex. RW1/B, was forwarded to the petitioner under registered cover calling upon him to resume his duties on 10.12.2010. The registered notice/envelop (Ex. RW1/D) was received back undelivered. The endorsement made by the postal authorities on the registered letter/envelop is reproduced below verbatim for ready reference.

“प्राप्त करता बार—बार तलास करने पर नहीं मिला घर वाले से पता चला कहीं बाहर चला गया है ।  
अतः बिना तकसीम भेजने वाले को वापिस की जाये” ।

22. It is not the case of the petitioner that his address written on the registered letter/envelop is/was incorrect. The endorsement made by the postal people reveals that the receipt of the registered letter was deliberately refused by the petitioner and his family members.

23. Taking into account the above noted facts as well as the act and conduct of the petitioner, I have no hesitation to conclude that his services were not disengaged by the respondent. He (petitioner) abandoned the job willingly because of which he is not entitled to any protection under the Act. No provision of the Act has been flouted by the respondent. It appears to me that the avarice of the petitioner to grab the Government job and money has forced him to file a totally false and baseless claim.

24. This issue is decided against the petitioner and in favour of the respondent.

### **Issues No. 2 & 3**

25. Not pressed

### **Relief (Issue No. 4)**

26. As a sequel to my findings on issue No.1 above, the instant claim petition being meritless and malafide fails. It is, therefore, dismissed. Parties to bear their own costs.

27. The reference is answered in the aforesaid terms.

28. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

29. File after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of January, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 129/2011**

**Date of Institution : 26.11.2011**

**Date of Decision : 17.01.2013**

Shri Shyam Singh s/o Shri Swaru Ram, r/o Village Dadoun, P.O. Cheuni, Tehsil Thunag, Distt. Mandi, H.P.

..Petitioner.

*Versus*

The Sr. Executive Engineer, HPSEB (Elect.) Division Gohar, Distt. Mandi, H.P.

..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Bimal Sharma, Adv.

For the Respondent : Sh. Bhanwar Bhardwaj, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Shyam Singh S/O Sh. Swaru Ram R/O Village Dadoun, P.O. Cheuni, Tehsil Thunag, Distt. Mandi, H.P. by The Sr. Executive Engineer, HPSEB (Elect.) Division Gohar, Distt. Mandi, (H.P.) w.e.f. 16.3.2000 without issuing charge sheet, without conducting enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits, the above workers are entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent on 01.1.1989. He worked as such up-to 15.3.2000. On 16.3.2000, his services were terminated by the respondent by an oral order. Before the termination of his services, neither any notice was given to him nor the retrenchment compensation was paid. During the period of his employment, the respondent used to give him the artificial/fictional breaks. He completed 240 days of work in the preceding 12 months before the termination of his services. At the time of his retrenchment, the persons junior to him including Sh. Manoj Kumar were retained in service by the respondent. The latter failed to abide by the principle of ‘last come first go’ which amounts to unfair labour practice. Work is still available with the respondent/Board. His services have been disengaged so as to deprive him from the seniority and the regularization of his services as per the policy of the Government. Breaks were given to ensure that he (petitioner) does not complete 240 days of work. His junior Shri Manoj Kumar s/o Shri Dolan Singh was provided the regular work by the respondent. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, he (petitioner) prays that the verbal termination order dated 16.3.2000 be set aside. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is hit by the vice of delay and laches. The petition is not maintainable as no legal or vested right of the petitioner has been infringed.

On merits, it has been denied that the services of the petitioner were engaged as a daily wager on 01.1.1989. The petitioner was initially engaged as a beldar on daily wage basis w.e.f. 05.10.1989. He worked as such up-to 31.3.1998. The petitioner used to work in a very casual manner and generally remained absent. He was not on the rolls of the Board during the years 1992, 1997 and 1999. After 31.3.1998, the petitioner did not work up-to 21.2.2000. On 16.2.2000, when the work of restoration of electric supply was required to be carried out, the petitioner was again called to work vide letter of even date. It was made clear in the letter dated 16.2.2000 that the work is of a specific nature and short duration. On the completion of the work, the engagement of the services of the petitioner will automatically come to an end. Due to this reason, no notice was required to be served upon the petitioner before his disengagement. The petitioner never remained in continuous employment. He was a casual worker only and did not complete 240 days of work in any year of his employment. No fictional breaks were ever given to the petitioner. No person junior to the petitioner has been retained in service or engaged/re-engaged. The petitioner was in the habit of leaving the job voluntarily. He did not attain the status of a temporary workman. No provision of the Act has been flouted. During the relevant period, in order to meet exigency of work, 16 labourers who were already working in Electrical Sub Division, HPSEB, Padhar were temporarily deputed to accomplish the time bound work. Those 16 beldars have been reverted to their original Sub Division, HPSEB, Padhar after the completion of the work. The petitioner cannot claim any preference over those 16 beldars particularly when he left the job willingly in the month of March, 1998. Moreover, the beldars who were called from Padhar Sub Division are no longer working under him (respondent). Permanent work is not available with him. The Government of Himachal Pradesh has imposed ban on the employment of the labour on daily wage and part time basis. As and when the ban is lifted and the work is available, the services of the petitioner will be re-engaged in accordance with his seniority. The petitioner is not entitled to any relief. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been disputed that he worked only up-to 31.3.1998. His services were not engaged for a specific period or work. He never abandoned the job. Artificial breaks were provided to him malafidely.

5. Per order dated 04.10.2012, following issues were struck.

1. Whether the services of the petitioner have been terminated by the respondent w.e.f. 16.3.2000 wrongly and illegally as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
4. Relief.
5. I have heard the ld. counsel/AR for the parties and have gone through the case file.
6. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes  
 Issue No.2 : Not pressed  
 Issue No.3 : No  
 Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### **Issue No. 1**

8. The petitioner Shri Shyam Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he used to absent from his duties. He admitted that he did not report for work in the year 1992, 1997 and 1999. Again said, he had reported for his duties. He denied that he did not work from the year 1998 to 21.2.2000. He admitted that he was called for work on 16.2.2k. He denied that his services were to come to an end on the completion of the work and he has given a phoney statement. 9. Conversely, Shri B.R. Thakur, Assistant Engineer, Electrical Division, HPSEB, Gohar testified as RW1. He corroborated on oath the contents of the reply preferred by the respondent.

In the cross-examination, he admitted that the seniority list is maintained at the Divisional level. He also admitted that Shri Manoj Kumar is junior to the petitioner and is serving the respondent. He denied that he has given a phoney statement.

10. No reference has been received from the appropriate Government regarding providing the fictional breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

11. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily waged beldar on 05.10.1989 (instead of 01.1.1989). The respondent has not placed/exhibited on the file any document evidencing that the services of the petitioner were engaged for a specific work of short duration.

12. The mandays chart of the petitioner is there on the file. Its perusal unfolds that the petitioner served the respondent/department intermittently from 05.10.1989 to 15.3.2000. He (petitioner) did not work for 240 days in a block of 12 calendar months preceding the date of his termination i.e. 16.3.2k as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

13. Shri B.R. Thakur (RW1) in his cross-examination admitted that Shri Manoj Kumar is junior to the petitioner. He is still serving the respondent/Board. This indicates that the respondent has failed to adhere to the principle of 'last come first go'. His action contravenes the provisions of Section 25-G of the Act. For this reason, the termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Section 25-G of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date of his retrenchment.

14. This issue is decided in favour of the petitioner and against the respondent.

#### **Issue No. 2**

15. Not pressed

**Issue No. 3**

16. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

17. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in Liaq Ram Versus State of H.P. & others, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

18. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. Moreover, in the claim petition, there is no whisper to the effect that from the date of his disengagement, the petitioner is unemployed and is having no source of income. For these reasons, he is not entitled to the back wages.

19. This issue is also decided in favour of the petitioner and against the respondent.

**Relief (Issue No. 4)**

20. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 16.3.2000 except back wages. Parties to bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of January, 2013.

RAJAN GUPTA,  
Presiding Judge,  
*Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOURCOURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 32/2011**

**Date of Institution : 16.4.2011**

**Date of Decision : 04.01.2013**

Smt. Sunita Devi w/o Shri Nathu Ram, r/o Village Guddi Dhar, P.O. Salwana, Tehsil Sunder Nagar, District Mandi, H.P.

..Petitioner.

*Versus*

The Divisional Forest Officer, Forest Division, Suket, Sunder Nagar, District Mandi, H.P.  
..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of the services of Smt. Sunita Devi W/O Shri Nathu Ram daily wages worker by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. w.e.f. October, 2003 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, whereas persons junior to him have been retained by the employer, as alleged by the worker, is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily wager by the respondent on 1st March, 1999 in Forest Range, Kangoo. She served as such up-to 14.9.2003. On 1st October, 2003, her services were terminated by the respondent by a verbal order. Muster Roll for the month of October, 2003 was not issued in her name. Her services were disengaged without informing her about the misconduct, if any, and issuing the show cause notice. As per the seniority list issued on 31.3.2003 by the respondent, 386 workmen are working under him. Her (petitioner's) name figures at serial No.237 of the said list. In accordance with the seniority list, 150 persons junior to her are serving the respondent. Her seniority has been ignored by the respondent. The latter has failed to adhere to the principle of ‘last come first go’ which amounts to unfair labour practice. She worked for more than 240 days in each and every calendar year of her engagement. From the date of her termination, she is unemployed. She approached the respondent time and again for re-employment, but in vain. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, she (petitioner) prays that the termination order dated 01.10.2003 be upset. The respondent be directed to reinstate her in service with all consequential benefits including seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is bad on account of delay and laches on the part of the petitioner/claimant.

On merits, it has been denied that the services of the petitioner were engaged as a daily wager on 01.3.1999. The petitioner was initially appointed in the month of March, 2000. She worked for 119 days in the year 2000, 60 days in the year 2001, 144 days in the year 2002 and 152 days in the year 2003. The petitioner worked on various seasonal forestry works intermittently for a few days in a particular year. She used to work as per her sweet will and convenience. Her services were never terminated as alleged. In fact, in the month of October, 2003, the petitioner abandoned the job voluntarily. It stands admitted that the name of the petitioner figures at serial No. 237 of the seniority list. The services of the petitioner were utilized as and when she approached him (respondent) for carrying out the seasonal forestry works. After October, 2003, the petitioner never approached him for re-engagement. The principle of 'first come last go' was strictly followed. The petitioner never completed 240 days of work in any calendar year of her employment. She is gainfully employed as an agriculturist. Since the petitioner left the job of her own, she is not entitled to any protection under the Act. The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2008. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be rejected.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been disputed that she abandoned the job.

5. Per order dated 14.03.2012, following issues were struck.

1. Whether the termination of the services of the petitioner by the respondent w.e.f. October, 2003 is violative of the provisions of Industrial Disputes Act, 1947 as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad on account of delay and laches as alleged. If so, its effect? ..OPR.
4. Relief.
  
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
  
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Issue No.2 : Not pressed

Issue No.3 : No

Relief : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

**Issue No. 1**

8. Smt. Sunita Devi (pt.) stepped into the dock as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety. She also placed on the record Mark-A viz. the copy of the seniority list issued by the respondent.

In the cross-examination, she denied that the present industrial dispute was raked by her in the year 2008. She admitted that she works as an agriculturist. She denied that her services were engaged for carrying out the seasonal forestry works and she left the job voluntarily.

9. Conversely, Shri Ajit Kumar Thakur, Divisional Forest Officer, Forest Division, Sunder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the seniority list Mark-A has been issued by his office. He also admitted that neither any show cause notice was issued to the petitioner nor an inquiry was conducted against her. Even no retrenchment compensation was paid to the petitioner. He denied that he has given a phoney statement.

10. Ex. RW1/B is the mandays chart relating to the petitioner.

11. The petitioner has pleaded that she was initially appointed as a daily wager by the respondent on 1st March, 1999. On this aspect of the matter, the respondent has maintained that the services of the petitioner were initially engaged as a casual worker for seasonal forestry works in the month of March, 2000. The mandays chart Ex. RW1/B goes to show that the petitioner served the respondent intermittently from March, 2000 to October, 2003. It is not the case of the petitioner that the mandays chart produced by the respondent is incorrect. True it is that in the seniority list Mark-A, the date/month of initial engagement of the petitioner is recorded as March, 1999. Much reliance cannot be placed on the date of initial engagement of the petitioner shown in Mark-A since the same is not supported by the mandays chart Ex. RW1/B or any other document. The respondent has also not produced any document evidencing that the services of the petitioner were engaged only for seasonal forestry works. Thus, I have no hesitation to say that the petitioner was appointed as a daily wager by the respondent in the month of March, 2000 and she worked intermittently up to the month of October, 2003.

12. The petitioner has maintained that in the month of October, 2003, her services were wrongly and illegally dispensed with by the respondent by passing a verbal order. While denying the said fact, the respondent has pleaded that in the month of October, 2003, the petitioner abandoned the job of her own accord and free volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that she has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was given to the petitioner after she allegedly left the job. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

13. Ex. RW1/B i.e. the mandays chart clarifies that the petitioner did not work for 240 days in any calendar year of her engagement as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

14. As already mentioned the copy of the seniority list of daily wagers as it stood on 31.3.2003 issued by the respondent is Mark-A. The name of the petitioner is mentioned at serial No.237 of this list. As per the list as many as 386 daily wagers are working under the respondent. The workmen whose names are there from serial No.238 to 386 are junior to the petitioner. Even if, the initial date/month of the appointment of the petitioner is taken as March, 2000, the labourers from serial No.321 onwards are junior to the petitioner as their services were engaged in the month of April, 2000 and thereafter. There is nothing on the record to show that before the termination of the services of the petitioner, the services of the persons junior to her were disengaged by the respondent. The latter has thus failed to abide by the principle of 'last come first go'. The action of the respondent contravenes the provisions of Section 25-G of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified. Needless to say that for deriving the benefit under Section 25-G of the Act a workman need not complete 240 days of work in a block of 12 calendar months preceding the date/month of her retrenchment.

15. This issue is decided in favour of the petitioner and against the respondent.

### **Issue No. 2**

16. Not pressed

### **Issue No. 3**

17. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

18. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our Hon'ble High Court in Liaq Ram Versus State of H.P. & others, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

19. While testifying in the Court as PW1, the petitioner admitted that she earns her livelihood by doing the work of agriculture. The petitioner (PW1) has given her age as 38 years. It is common knowledge that a young woman like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she was not gainfully employed. For these reasons, she is not entitled to the back wages.

20. This issue is also decided in favour of the petitioner and against the respondent.

### **Relief (Issue No. 4)**

21. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date/month of her illegal termination i.e. October, 2003 except back wages. Parties to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of January, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 17/2011  
Date of Institution : 31-03-2011  
Date of Decision : 24-01-2013**

Sh. Swaran Singh s/o Sh. Falatu Ram, r/o Village Radoh, P.O. Sunet, Tehsil Fatehpur, Distt. Kangra, H.P.

..Petitioner.

*Versus*

1. The Managing Director, Himachal Pradesh Financial Corporation, New Himrus Building, Circular Road, Shimla-1.

2. The Assistant General Manager, H.P.F.C. Dharamshala, Distt. Kangra, H.P.  
..Respondents.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR.  
Sh. Vijay Kaundal, Adv.

For the Respondents. : Sh. S.C. Vaid, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Swaran Singh s/o Sh. Falatu Ram, Chowkidar by i) The Managing Director, Himachal Pradesh Financial Corporation, New Himrus Building, Circular Road, Shimla-1. ii) The Assistant General Manager, H.P.F.C. Dharamshala, Distt. Kangra, H.P. w.e.f. 07-1-2006 in view of the agreement dated 10-03-1995, is legal and justified? If not, to what service benefits and relief the above named workman is entitled to from above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated Chowkidar (Watchman) by the respondents w.e.f. January, 1992 in Tough Bond Retreaders, Mohtali. He discharged his duties as a Chowkidar in the said unit up-to 23-8-1993 without any break. At the time of his engagement, no appointment letter/order was issued in his name by the respondents. With effect from 24-08-1993, his services were transferred by the respondents from M/S Tough Bond Retreaders to M/S Shubh Enterprises, Sunet. He served M/S Shubh Enterprises, Sunet to the entire satisfaction of the respondents up-to 06-01-2006. During his service tenure, neither any complaint was received against him nor any show cause notice was issued to him for the misconduct, if any. He discharged his duties honestly and diligently. On 5th January, 2006, he was called by the respondent No. 2 to collect the payment. As per the directions of his superiors, he (petitioner) reported in the office of the respondent No.2 on the given date i.e. 05-01-2006 to collect the salary. To his surprise, his services were terminated by the respondent No.2 per order No.170, dated 07-01-2006. Before the termination of his services, neither any show cause notice was given to him nor he was charge sheeted. Even, one month pay in lieu of the notice period and retrenchment compensation were not paid to him. He had completed more than 240 days of work in each and every calendar year of his engagement. The wages from 01-01-2006 to 06-01-2006 were also not paid to him before his termination as per Section 5 (3) of the Payment of Wages Act, 1936. He discharged his duties under the respondents in both the units for 24 hours each day. Weekly offs and national holidays were not given to him. He was paid the wages only for 8 hours daily by the respondents. He is entitled to the balance wages of 16 hours per day from the date/month of his initial engagement i.e. January, 1992 to 06-01-2006. He is also entitled to the wages for weekly offs and national holidays during the aforesaid period. At the time of the termination of his services, the persons junior to him engaged by the respondents in various units in Himachal Pradesh were retained in service by the latters. After his retrenchment, new/fresh hands have been engaged by the respondents. He was not given an opportunity of reemployment. He worked under the respondents from the years 1992 to 06-01-2006 and completed 15 years of services. He is entitled to regularization of his services after completion of 10 years of service as per the observations made by the Hon'ble Apex Court in Mool Raj Upadhyaya's case and Gehar Singh's case. On the basis of these judgments, he is entitled to the regularization w.e.f. 01-01-2002 in the capacity of Chowkidar (Watchman) in the pay scale of Rs. 2520-4140/- with initial start of Rs.2620/- per mensem with all consequential benefits. From the date of his termination i.e. 07-01-2006 he is not gainfully employed. The act and conduct of the respondents is illegal and unjustified. It is also violative of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 ( 14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition /statement of claim, the petitioner has claimed the following relief(s):-

- “ (i) The Hon'ble Court may kindly be set aside the illegal termination order dated 07-01-2006 and directed to respondents to reinstate the services of applicant with full back wages, in continuity of service with seniority and all other consequential service benefits throughout.
- (ii) The Hon'ble Court may kindly be again directed to respondents to consider the case of applicant for regularization after completion of 10 years services in regular pay scale and pay him arrears and others consequential benefits till the date of unlawful termination.
- (iii) The Hon'ble Court may kindly be determine the facts of 24 hours duties of the applicant and directed to respondent to pay the balance wages to the applicant for the aforesaid period”.

3. On notice, the respondents appeared. They filed joint reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the services of the petitioner were engaged as a daily waged Chowkidar on contract basis to watch and ward the assets of various industrial units taken over by the Respondent Corporation from time to time under Section 29 of the State Financial Corporation Act, 1951. According to the contract, the petitioner had to perform his duties for a limited period. His engagement was coterminus with the sale/restoration of the industrial unit taken over in which he was employed. Since the unit has been restored back to the legal heirs of the deceased loanee by the Corporation, the services of the petitioner were automatically discontinued as per the terms and conditions of the contract. The disengagement of the services of the petitioner cannot be termed as retrenchment under the Act. The respondent/Corporation does not have any regular vacancy of chowkidars to be engaged in taken over units. No rules or regulations have been framed by the Corporation to employ the chowkidars. The duties which are assigned to the Chowkidars appointed in taken over units are of casual nature on daily wages basis. Since the petitioner was engaged on contract basis, the completion of 240 days of continuous service in a year will not entitle him for reengagement or regularization of his services. No industrial activity is in progress in the closed/sick units when their assets are taken over by the Corporation. The petitioner was appointed in the taken over and closed unit for watch and ward purposes only. He cannot be deemed to be an employee/workman of the concerned industrial units under the Act. The respondent/Corporation is, in fact, not the employer of the petitioner/claimant. No salary was paid by the Corporation to the petitioner during the period of his engagement. The salary paid to the petitioner was debited to the loan account of the concerned industrial unit. He (petitioner) is/was to be treated as a Chowkidar to watch and ward the assets on behalf of the industrial concern which was taken over. The Corporation is considered owner of the unit/company for a limited purpose under Section 29 of the State Financial Corporation Act, 1951. Therefore, the petitioner cannot be considered to be any employee of the Respondent/Corporation.

On merits, it has been denied that the services of the petitioner were engaged as a daily rated Chowkidar w.e.f. January, 1992. It has been pleaded that at the instance of the petitioner, his services were engaged w.e.f. 20-01-1993 in taken over unit of M/S Tough Bond Retreaders, Mohtali. The petitioner discharged his duties as a Chowkidar in that unit till 23-08-1993. Earlier to him, Sh. Gurdev Singh, the peon of the Corporation, remained Chowkidar in the said unit from the date it was taken over i.e. from 25-11-1992 to 19-01-1993. The respondent/Corporation had taken over one unit of M/S Shubh Enterprises, Sunet on 24-08-1993 under Section 29 of the SFCs Act, 1951 . At the behest of the petitioner, he was engaged as a chowkidar in the above unit on 24-08-1993 itself. The possession of the assets of the aforesaid taken over unit was restored to the legal heirs of late Sh. Harbans Singh, proprietor of the unit on 07-01-2006 when they (legal heirs) settled the loan account of M/S Shubh Enterprises. After that, the services of the petitioner were terminated as the same were not required and were co-terminus on the sale of the industrial unit or restoration of unit to the proprietor or his legal heirs. The agreement for temporary appointment as Chowkidar was duly executed by the applicant/petitioner in favour of the Corporation on 10-03-1995. Their (respondents') action is covered by exception (bb) of Section 2 (00) of the Industrial Disputes Act, 1947. No provision of the Act has been flouted. Even, Section 5 (3) of the Payment of Wages Act, 1936 has not been violated. The petitioner never worked for 24 hours as claimed. He is not entitled to any payment. No seniority list of daily waged Chowkidars has been maintained in view of the nature of the duties assigned to them. The petitioner is not a daily waged employee of the respondent/Corporation. His services have been rightly disengaged. The petition is meritless. The petitioner is not entitled to any relief.

In these circumstances, the respondents pray that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents. It has been maintained that the

respondents have failed to abide by the principle of 'last come first go'. The wages were not paid to him as per the provisions of the Payment of Wages Act, 1936.

5. Per order dated 17-04-2012, following issues were struck :-

- 3. Whether the termination of services of the petitioner by the respondents is illegal and unjustified as alleged? ..OPP.
- 2. Whether the reference is not maintainable as alleged? ..OPR.
- 3. Relief.
- 6. I have heard the ld. counsel /AR for the parties and have gone through the case file.
- 7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Issue No.2 : Yes

Relief : Claim petition dismissed vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### **Issue No. 1 and 2.**

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and decision.

9. The petitioner Sh. Swaran Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services used to be engaged as Chowkidar by the Financial Corporation in the industrial units taken over by it. He denied that he was to remain in service till the taken over industrial unit is sold or restored to its owner(s). He does not know that the pay given to him by the respondent/Corporation used to be debited to the loan account of the unit which was taken over. He denied that his services were engaged on contract basis. He admitted that Ex. R1 bears his signatures. Self stated, his signatures were procured during the night. No report in this regard was made by him to any one. He does not know the name of any person junior to him who was retained in service by the respondents. He feigned ignorance about the fact that the chowkidars, who were appointed in the taken over units, were required to execute an agreement regarding their temporary employment on contract basis. He denied that his services have been rightly dispensed with by his opponents and he has instituted a phoney petition.

10. Conversely, Sh. Mehar Singh, Manager, Himachal Pradesh Financial Corporation, Shimla, testified as RW1. In his affidavit Ex.RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by the respondents.

In the cross-examination, he denied that the services of the petitioner were terminated in a wrongful manner and he is telling the lies.

11. Ex. PW1/B is the copy of the termination letter/notice which was served upon the petitioner by the respondent No.2. It depicts that the services of the petitioner were disengaged w.e.f. 07-01-2006 as taken over industrial unit i.e. M/S Shubh Enterprises, Sunet was restored to its owner(s).

12. Ex. R1 is the copy of the अस्थायी नियुक्ति अनुबन्ध पत्र (agreement of temporary employment on contract basis) which was executed between the parties.

13. It is the admitted case of the parties that the services of the petitioner were engaged as a chowkidar in the units which were taken over by the respondent/Corporation under Section 29 of the State Financial Corporations Act, 1951. From the reply submitted by the respondents, it can be gathered that the petitioner served as a chowkidar from 20-01-1993 to 06-01-2006.

14. Ex. R1 is the copy of the agreement which was executed by the petitioner in favour of the respondents regarding his temporary employment on contract basis. The petitioner (PW1) during his cross-examination, admitted that Ex. R1 bears his signatures. Legally speaking, a person signing the document is presumed to know and agree to its contents. Condition No. 3 of Ex. R1 reads thus:-

“यह कि द्वितीय पक्ष को चौकीदारी का कार्य सिर्फ अस्थायी तौर पर दिया गया है जब तक कि अधिग्रहण की गई सम्पत्ति राज्य वित्तीय निगम अधिनियम 1951 की धारा 29 के अधीन विक्रय नहीं हो जाती है या उसका कब्जा मालिक को वापिस नहीं किया जाता। अधिग्रहण की गई इकाई सम्पत्ति के विक्रय होने के तुरन्त पश्चात द्वितीय पक्ष की सेवाएं समाप्त समझी जाएगी। यहां यह भी स्पष्ट किया जाता है कि द्वितीय पक्ष की सेवाएं केवल अधिक सम्पत्ति के विक्रय होने या उसका कब्जा मालिक को वापिस किया जाता है तक ही सीमित है, उसके पश्चात द्वितीय पक्ष का प्रथम पक्ष पर किसी प्रकार का दावा नहीं होगा।”

15. The services of the petitioner were dispensed with by the respondents in accordance with the above noted condition as is clear from the contents of the termination notice/letter Ex.PW1/B. Taking into account the terms and conditions of the engagement of the petitioner as well as the evidence available on the record, I am at a loss to understand as to how it lies in the mouth of the petitioner to say that his services were wrongly and illegally terminated by the respondents. In my considered opinion, the termination of the services of the petitioner by the respondents does not amount to retrenchment in view of Section 2 (oo) (bb) of the Act.

16. Such being the situation, it is held that the claim petition is not maintainable in the present form. It appears to me that the avarice of the petitioner to grab the government job and money has forced him to file a totally false and baseless claim. No relief can be granted to the petitioner/claimant. His claim is fallacious.

17. These issues are decided against the petitioner and in favour of his adversaries.

### **Relief (Issue No. 3)**

18. As a sequel to my findings on the issues No. 1 & 2 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed with costs quantified as Rs. 3,000/-.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of January, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Industrial Tribunal-cum-*  
*Labour Court, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 121/2011**  
**Date of Institution : 16.11.2011**  
**Date of Decision : 04.01.2013**

Shri Tej Singh s/o Shri Moti Chand, r/o Village Ghisal, P.O. Sach, Tehsil Pangi, Distt. Chamba, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division Killar (Pangi), Distt. Chamba, (H.P.)  
*..Respondent.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. T. R. Bhardwaj, AR  
 Sh. Inder Jaryal, AR

For the Respondent : Sh. Sanjeev Katoch, Dy. D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Tej Singh S/O Sh. Moti Chand R/O Village Ghisal, P.O. Sach, Tehsil Pangi, Distt. Chamba, H.P. by the Executive Engineer, HPPWD Division Killar (Pangi), Distt. Chamba, H.P. from time to time w.e.f. January, 2002 to July, 2005 and finally w.e.f. October, 2005 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits, the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) reads thus:-

“1. That I was initially engaged as daily wages Beldar on must roll basis since 1986 and continuously worked with intermittent breaks till December, 1995 under the respondent in Pangi Division at Killar, HPPWD Sub Division Sach. During the of 1996 respondent department illegally given me intermittently breaks intentionally just to deprive the applicant from the right of regularization of my services where as the services of my junior workmen were retained continuously on Muster-Roll. Thereafter

I have been re-engaged on Muster-Roll during the year of 1997 and worked continuously till 31.10.1999. During this period I have completed more than 160 days continuous service in each calendar year as laid down for Tribal Area of Tehsil Pangi for the purpose of Section 25-B of the ID Act, 1947.

2. That the services of the petitioner were terminated by the respondent in the end of November, 1999 illegally by passing oral order. Against my illegal termination, I filed OA No.1585/2000 before the Hon'ble H.P. Administrative Tribunal in which the Hon'ble Tribunal has passed order/judgment dated 29.06.2000 directed the respondent Department that "to re-engaged the applicant without any undue delay. The applicant in that event shall not be entitled for back wages but the period of dis-engagement and re-engagement would be counted for his seniority" (Copy attached as Annexure P-1) and according I was re-engaged by the Department on Muster Roll basis in the month of July 2000 and I continuously worked till December, 2001. Thereafter my services were dis-engaged in the month of January, 2002 and again re-engaged in the month of May 2002 and worked till September, 2002 thereafter my services were again disengaged in the month of October, 2002 and re-engaged during June 2003 and remained worked upto October, 2003 thereafter my services were again disengaged during November, 2003 and again re-engaged during June 2004 and worked upto September 2004 thereafter my services were again dis-engaged during October 2004 and against reengaged during August 2005 and worked upto 1st fortnight of October, 2005. The services of the petitioner were terminated/dis-engaged finally in the month of October, 2005 without any reason.
3. That when the services of the petitioner were terminated in the month of Oct. 2005, the respondent has never served one month notice of retrenchment upon me nor paid one month wages in lieu of notice period. No retrenchment compensation has been paid to me at the time of termination/retrenchment of my services. No notice of retrenchment in the prescribed manner has been served upon the petitioner as well as upon the appropriate Govt. No prior approval of the Govt. has been obtained before retrenchment/termination of my services as such, the action of the respondent in terminating my services is illegal and unjustified and clear cut violation of Section 25-F & other provisions of ID Act, 1947.
4. That the applicant has never remained close from work at my own since 1986 to till the date of termination. During this period, petitioner only remain closed from work as and when Respondent has not provided work/issued Muster-Roll to me for which I am no where defaulter. The respondent has given intermittent/fictional breaks to the petitioner from time to time intentionally just to favour the junior workmen favorite to the respondent (whose names are mentioned at Sr. No.1 to 16 in below para-5) so that petitioner could not complete the criteria of 160 days as laid down for tribal area of Pangi Tehsil in each calendar year. As such the entire period in which the respondent has not provided any work to me is required to be counted for the purpose of calculation of 160 days continuous service in each calendar year. It is well established law that the period of cessation of work not due to any fault on the part of employee always gets calculated as period of continuous service. As such, the services of the petitioner is continuous for the purpose of Section 25-B of the ID Act, 1947.
5. That before effecting termination/retrenchment, the overall Divisional level seniority list of all daily waged workmen working under the Respondents has not been circulated nor got noted from the concerned workmen. It is further submitted that neither the principle of "LAST COME FIRST GO" has not been followed by the

respondent nor the procedure of re-employment of retrenched workmen has also not been followed. As such, the action of the Respondent is illegal and unjustified and gross violation of Section 25-G & H of ID Act-1947 read with Rule 82 & 83 of HP Industrial Dispute Rule 1974. The applicant was working with the respondent since 1986 on Muster Roll basis, whereas my juniors S/Sh. Shiv Kumar and Surinder Kumar etc., who joined in the year of 1998-99 and 2000-2001 respectively in the respondent department much after me, have been retained and they are working continuously still. Apart from above the following worker who were also junior to the petitioner have been retained continuously in the department by the respondent:-

Sr. No.	Name of Junior Workman Serve Shri/Smt.	Father's name Serve Shri/Smt.	Date of initial engagement in the deptt. on Muster Roll.
1.	Chuni Lal	Ghassi Ram	01.01.1997
2.	Khel Chand	Bhagat Ram	01.05.1997
3.	Hukan Chand	Jai Dass	01.08.1997
4.	Jai Dass	Madho Ram	01.01.1998
5.	Tek Chand	Shiva	01.06.1999
6.	Shayam Lal	Sunam Guru	01.06.1998
7.	Sucheta Ram	Mahesh Chand	01.05.1998
8.	Smt. Bhag Dei	Rumal Chand	6/94
9.	Smt. Shin Dei	Khem Lal	11/99
10.	Smt. Sur Dei	Sh. Shambhu Ram	5/94
11.	Smt. Shyami	Sh. Muni Lal	5/94
12.	Hari Chand	Pan Dass	01.10.1997
13.	Prem Singh	Dharam Chand	5/98
14.	Parkash Chand	Hardiyal	01.04.2001
15.	Kishan Chand	Brij Lal	01.04.2001
16.	Trilok Nath	Prem Lal	01.04.2002
17.	Sham Lal	Shalik Ram	02.06.2006
18.	Dev Raj	Mehar Chand	20.07.2007
19.	Gauttam Singh	Gian Chand	07.09.2007

6. The respondent department has re-engaged Nos. of new workmen from time to time after the termination of my services, the name of such workmen are mentioned at Sr. No.17 to 19 in the Para 5 above. The names of some other fresh engaged workmen will be disclosed at the time of filing rejoinder or leading the petitioner's evidence. Apart from above it is further submitted that Nos. of junior workmen whose services were terminated/retrenched with petitioner, have been reengaged on Muster Roll and their services have been continued by the department till date continuously but I have not been provided any opportunity for re-employment with them. As such the action of the respondent is clear-cut violation of section 25-H of ID Act.
7. That if the services of the petitioner would have not been terminated illegally and intermittent breaks were not given during my service period, I must have complete my 10 years continuous service as on 31/12/95 and would have become entitled for regularization of my services w.e.f. 01/01/1996 as per judgment of Apex court in the case of Mool Raj Upadhayay V/s State of HP and under the 10 year regularization policy of the HP Govt. made there under from which I have been deprived illegally and I have been put under heavy financial loss. It is further submitted that the petitioner

was also entitled for regularization even under the 8 years regularization policy of the Govt. if my services would have not been terminated illegally time and again. Whereas respondent Department has regularized the services of my juniors who engaged on muster roll much after me. As such the action of the respondent not to regularized my services is illegal and un-justified. As per order dated 29.06.2000 (Annexure-P-1) of the Hon'ble Administrative Tribunal, it has been categorically mentioned therein that the period of disengagement and reengagement would be counted for the seniority of the petitioner but the respondent department has not counted my seniority for the period December, 1999 to June, 2000.

8. That the applicant has spotless services with the respondent and has never been charge-sheeted for any act of indiscipline, negligency of work or misconduct and worked with full devotion. That before passing verbal order of termination of my services, no charge sheet has been served upon me nor held any inquiry. No opportunity of personal hearing has been afforded to the petitioner. As such, the action of the respondent is illegal and unjustified and also against the principle of Natural Justice. The said action of the respondent is also violative to the Article 14 and 16 of the constitution of India.
9. That the petitioner is un-employed since the date of my illegal termination from the month of Oct., 2005 to till date and nowhere gainfully employed since then as such, the petitioner is entitled for full back-wages. Keeping in view the above facts and circumstances as stated in the foregoing paras, it is established beyond doubt that respondent has committed gross violation of statutory provision of Section 25-F, G and H of the ID Act- 1947 and article 14 & 16 of constitution of India. The action of the respondent is also malafide, arbitrary, unconstitutional, illegal and unjustified and also against the principle of natural justice and also amounts to unfair labour practice. Hence, it is therefore prayed to grant following relief to the petitioner/applicant:-
  - (a) The oral orders of termination/retrenchment of my services passed by the respondent from the month of Oct., 2005 be set-aside being illegal, arbitrary and un-justified.
  - (b) To direct the respondent to re-instate the services of petitioner w.e.f. Oct., 2005 alongwith full back wages, seniority including continuity of services as the petitioner remained un-employed since the date of illegal retrenchment/termination of services.
  - (c) To direct the respondent to count the period of intermittent/frictional breaks given in the entire service to the applicant from January 2002 to Oct., 2005 from time to time be counted towards the calculation of continuous service of 160 days in each year (as laid down for the tribal area of Pang) under section 25B of ID Act and regularize the services of the petitioner w.e.f. 01/01/1996 under the 10/8 year regularization policy of the Govt. along with all consequential benefits.
  - (d) To direct the respondent for the production of original record pertaining to the case of petitioner.
  - (e) To direct the respondent to re-engage petitioner on Muster Roll basis pending final decision of the case.
  - (f) Any other relief as the Hon'ble court may deem fit".

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable in the present form. The petitioner has not come to the Court with clean hands. He has suppressed the material facts from the Court. The petition is bad for nonjoinder of the necessary parties and mis-joinder of the parties. It suffers from the vice of delay and laches. No legal or fundamental right of the petitioner has been infringed. The petitioner/claimant was initially engaged as a daily waged beldar during the year 1997 and not in the year 1996 as claimed by him (petitioner). He worked for 137 days in the year 1997, 159 days in the year 1998, 126 days in the year 1999, nil days in the years 2000 and 2001, 97 days in the year 2002, 107 days in the year 2003, 79 days in the year 2004 and 71 days in the year 2005. His mandays chart is annexure R-I. During the year 2005, the petitioner left the job of his own. As per the instructions issued by the Government of Himachal Pradesh, 160 days of work during each calendar year continuously for eight years in tribal area of Killar (Pangi) is required for seniority/regularization. The petitioner did not fulfill the said criteria during the period of his employment from the years 1997 to 2005. He used to leave the job voluntarily.

On merits, paras 1 to 9 of the reply read thus:-

“Para No.1: That the contents of this para are wrong hence denied. As the applicant was engaged during the year 1997. The applicant was not disengaged by the respondent but he left the job at his own will. The seniority of applicant is attached as Annexure-R-I. It is evident from the seniority list that the applicant does not full fill the criteria fix by the Govt. of Himachal Pradesh for 160 days in each calendar year continuous eight years service for regularization.

Para No.2:- That the contents of this para are wrong hence denied. It is submitted that the services of the petitioner were never terminated by the respondent but he left the job at his own will. In compliance to order of Hon’ble Himachal Pradesh Administrative Tribunal the petitioner was re-engaged during the year 06/2002 and he worked for some time up to 2005 and did not turn up to the job. There was no any dispute between the petitioner and respondent for 10/2005 to 2011 which proves that he filed the reference in the Hon’ble Court with malafied intension.

Para No.3:- That the contents of this para are wrong hence denied. As the petitioner was not sincere to his work for very beginning of his engagement with department and has never completed criteria of 160 days in each calendar year service for regularization/seniority as norms fixed by the Govt. of the Himachal Pradesh from his seniority attached as Annexure R-I further as discussed in para above not fictional breaks were never given to the petitioner.

Para No.4:- That the contents of this para are wrong hence denied. As mentioned in earlier part of reply, the petitioner does not qualified the criteria 160 days in each calendar year for continuous eight years service of petitioner has not been given by the respondent as evident from seniority list as attached at Annexure- R-I. Para No.5:- That the contents of this para are wrong hence denied. That the seniority list Divisional level warring was never demanded by the petitioner hence the claim of petitioner is wrong and unjustified. The services of petitioner were never terminated by the depart but he left the job at his own will. The persons as shown junior to him had worked continuously in the department and they are fulfilled the criteria for regularization as Annexure –R-II and were regularized as per Govt. policy where as petitioner failed to do so. It is, therefore requested that claim of the petitioner may kindly be dismissed in the interest of justice.

Para No.6:- That the contents of this para are wrong hence denied. It is submitted that the petitioner has not qualify for the regularization as per criteria of 160 days in each calendar year eight year service. Hence could not be considered for regularization and artificial breaks has not be given to the petitioner by the respondent as alleged. The petitioner has left/abandoned the service with replying respondent as he has himself gainfully self employed for his livelihood. The present Industrial dispute has been raised at a very belated stage.

Para No.7:-That the contents of this para are wrong hence denied.

Para No. 8:- That the contents of this para are wrong hence denied. As mentioned in earlier part of reply, the applicant does not qualify the criteria 160 days in each calendar year for continuous eight year service and therefore, the service of applicant could not be regularized. Artificial breaks as alleged by the applicant has not been given by the respondent as evident from seniority list as attached at Annexure R-I.

Para No.9:- The applicant has not qualified for the regularization as per criteria of 160 days in each calendar year for continuous eight year service hence could not be considered for regularization and artificial break has not been given to the applicant by the respondent as alleged.

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. No rejoinder has been preferred by the petitioner/claimant.
5. Vide order dated 03.08.2012, following issues were struck.
  1. Whether the termination of the services of the petitioner by the respondent from time to time w.e.f. Jan., 2002 to July, 2005 and finally w.e.f. October, 2005 is illegal and unjustified as alleged? ..OPP.
  2. Whether the reference is not maintainable in the present form? ..OPR.
  3. Whether the petitioner has not come to the Court with clean hands as alleged. If so, its effect? ..OPR.
  4. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
  5. Whether the petition suffers from the vice of delay and laches as alleged. If so, its effect? ..OPR.
  6. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

- Issue No.1 : Partly Yes, Partly No
- Issue No.2 : Not pressed
- Issue No.3 : Not pressed
- Issue No.4 : Not pressed

Issue No.5 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

**Issue No. 1**

8. The petitioner Shri Tej Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he served the respondent/department from the year 1997 to 2005. He denied that he left the service voluntarily. Self stated, his services were retrenched by the respondent on the pretext that no work is available for him. He denied that Pangi area remains snow clad for six months because of which the work is carried out in the said area from the month of May to October only. He admitted that because of the snow, he could not complete the criteria of 160 days of work in some years of his employment. Shri Jai Dass etc. are senior to him. He denied that he used to remain absent from work as per his sweet will. He also denied that since he left the job willingly he is not entitled to the re-employment etc.

9. Conversely, Shri M.P. Dhiman, Executive Engineer, HPPWD, Division Killar (Pangi) respondent testified as RW1. He corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the fictional breaks used to be given to the petitioner from time to time. He also denied that the services of the petitioner were disengaged and he (RW1) has given a phoney statement.

10. Mark-A is the copy of the order dated 29.6.2000 passed by the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal, Shimla, in O.A. No. 1585/2000 titled as Tej Singh versus State of Himachal Pradesh and others.

11. Mark-B and Ex. RW1/A are the mandays charts relating to the petitioner.

12. Exts. RW1/B and C are the mandays charts pertaining to S/Shri Chuni Lal and Chhin Dei etc.

13. The statements made by the petitioner (PW1), respondent (RW1) and the mandays chart Ex. RW1/A make it crystal clear that the petitioner served the respondent/department from the month of June, 1997 to October, 2005. The assertion of the petitioner that artificial breaks used to be provided to him by the respondent time and again w.e.f. January, 2002 to July, 2005 does not appear to be true as the same is not supported by any documentary evidence. Moreover, if the fictional breaks were provided by the respondent for more than three years (as claimed) then why the petitioner did not object to the same as and when he was reemployed by the respondent/department after the alleged break? The mandays chart Ex. RW1/A goes to show that in the years 2000 and 2001, the petitioner did not serve the respondent/department even for a single day. From the year 1997 to 1999, he served the respondent for less than 160 days in each and every calendar year of his engagement. If artificial breaks were provided by the respondent at the time of the institution of O.A. No.1585/2000, which was decided by the Hon'ble Administrative Tribunal per order dated 29.6.2000 (the copy of which is Mark-A) then why the petitioner did not agitate the same before the Hon'ble Tribunal? The reasons to that effect being obscure go to show that the petitioner is not telling the truth. No fictional breaks were ever provided to him by the respondent.

14. The version of the petitioner is that in the month of October, 2005, his services were wrongly and illegally terminated by the respondent. While denying the said fact, the respondent has pleaded that the petitioner abandoned the job of his own accord and free volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It has come in the statement of the respondent (RW1) that after the petitioner allegedly left the job no notice was given to him calling upon him to resume his duties. Absence from duty is serious misconduct. There is nothing on the file to show that some disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

15. From the mandays charts Exs.RW1/B and C, it can be gathered that Shri Jai Dass etc. were employed as daily waged beldars by the respondent in the year 1998 i.e. after the employment of the petitioner in the month of June, 1997. Shri Jai Dass etc. are junior to the petitioner. Some of these juniors are still working with the respondent/department. There is nothing on the record to show that at the time of termination of the services of the petitioner in the month of October, 2005, the services of the persons junior to him were also disengaged by the respondent. Therefore, it can be easily said that the respondent has failed to adhere to the principle of 'last come first go'. His action is violative of Section 25-G of the Act. Needless to say that for deriving the benefit under Section 25-G of the Act a workman need not complete 160 days of work in a block of 12 calendar months anterior to the date/month of his termination. For these reasons, the termination of the services of the petitioner by the respondent is illegal and unjustified.

16. This issue is, accordingly, decided in favour of the petitioner and against the respondent.

#### **Issues No. 2 to 4**

17. Not pressed

#### **Issue No. 5**

18. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".*

19. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in Liaq Ram Versus State of H.P. & others, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

20. During the cross-examination the petitioner (PW1) admitted that he earns his livelihood by doing the work of agriculture. The petitioner (PW1) has given his age as 40 years. It is common knowledge that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. He is thus not entitled to the back wages.

21. This issue is also decided in favour of the petitioner and against the respondent.

### **Relief (Issue No. 6)**

22. As a sequel to my findings on the various issues, the instant claim petition/reference succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date/month of his illegal termination i.e. October, 2005 except back wages. Parties to bear their own costs.

23. The reference is answered in the aforesaid terms.

24. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

25. File after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of January, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

### **IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 504/2009  
Date of Institution : 20.11.2009  
Date of Decision : 04.01.2013**

Shri Tirath Raj s/o Shri Hari Chand, r/o Village & P.O. Sarkidhar, Tehsil Sadar, District Mandi, H.P.

..Petitioner.

*Versus*

The President/Secretary, Shree Naina Devi Baba Dhajadhari, Mandir Smiti Committee, Village & P.O. Rewalsar, Tehsil & District Mandi, H.P.

..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. K.S. Guleria, Adv.

For the Respondent : Sh. T.R. Sharma, Adv.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

"Whether the termination of the services of Shri Tirath Raj S/O Shri Hari Chand by The President/Secretary, Shree Naina Devi Baba Dhajadhari Mandir Smiti Committee, Village & P.O. Rewalsar, Tehsil & District Mandi, H.P. w.e.f. 03-04-2007 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of back wages, service benefits and amount of compensation the above aggrieved workman is entitled to?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that Shree Naina Devi Baba Dhajadhari Mandir Samiti/Committee is a registered body having registration No.36-90 dated 13.6.1990. The Samiti/Committee engages the workers for the construction work and the maintenance of the temple etc. The Committee has also constructed the building/Sarain etc. for the stay of the pilgrims. Now the work of the construction of bathrooms and business complex is in progress. The Committee is even maintaining a store. It issues the utensils and beddings etc. to the pilgrims for which the Chowkidars (Watchmen) are required. Income of the temple Committee is more than Rs.2-3 lakhs per annum. His (petitioner's) services were engaged by the respondent as a daily waged whole time Chowkidar w.e.f. 08.9.1998. He worked in the temple store up-to 02.4.2007. His salary was Rs.2,000/- per mensem. On 03.4.2007, he was sent on leave by the respondent/employer. When he returned to work on 07.4.2007, it was conveyed to him (petitioner) that his services have been terminated/retrenched since 03.4.2007. Before the termination of his services, neither any notice was given to him nor the retrenchment compensation was paid. He was also not given an opportunity of being heard. He has been removed from service without any fault on his part. He has been victimized by leveling false allegations of absence from duty and negligence on his part so as to favour the junior workers. After his disengagement, one Shri Nanak Chand was employed by the respondent/Committee who died in harness. Thereafter, Shri Chint Ram s/o Shri Kesar Singh was appointed as a Chowkidar by the respondent. Not only this, new/fresh workmen namely S/Shri Ghanshyam, Raj Kumar and Dalip Kumar etc. have been employed by the respondent. At the time of engaging new/fresh hands he was not given an opportunity of re-employment. Since the day of his termination he is not gainfully employed. He (petitioner) was a whole time Chowkidar. Minimum wages as per law were not paid to him from the date of his appointment. The act and conduct of the respondent is illegal and unjustified. It is also violative of the various provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short). A notice was served upon the respondent by him. False reply to it was sent by the respondent.

As such, he (petitioner) prays that the oral termination order dated 03.4.2007 be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. It has been owned that the Mandir/Committee is a registered body and it engages workers for the construction and maintenance of the temple etc. The fact that the services of the petitioner were engaged as a daily waged Chowkidar on 08.9.1998 stands admitted. However, it has been denied that the petitioner worked as such up-to 02.4.2007 or was sent on leave on 03.4.2007. During the service tenure of the petitioner, some cases of theft were traced out. Every time the petitioner admitted his guilt. Because of the act and conduct of the petitioner, his services were terminated in the general house headed by Shri Dhanjay Sharma, the then President of the Committee. The general house was held in the presence of the petitioner and other members of the Committee. Shri Dhanjay Sharma (Ex-Pradhan) has kept all the record of the general house including the record of the termination of the services of the petitioner with him and has not handed over the same to the newly formed Committee. Since the petitioner has not arrayed the then Pradhan and Secretary of the Committee as parties to the petition, the same is bad for nonjoinder of the necessary parties. The notice, which was received from the petitioner, was duly

replied. Resolution of termination was passed in the general house in the presence of the petitioner. No provision of the Act has been infringed. After the retrenchment of the services of the petitioner, no new/fresh hands have been engaged. The petitioner was not a whole time Chowkidar as claimed. He has been paid the requisite wages and is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been pleaded that his services have been terminated without holding the domestic inquiry. The termination order passed by the respondent is void ab initio.

5. Per order dated 08.9.2011, following issues were struck by my ld. Predecessor:-

1. Whether the disengagement of the petitioner w.e.f. 3-4-2007 is violative of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act as alleged. If so, to what relief the petitioner is entitled to? ..OPP.
2. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Partly Yes, Partly No

Relief. : Claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### **Issue No.1**

8. Shri Tirath Raj (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety. He also stated that false allegations of theft were leveled against him. No FIR was lodged against him by the respondent/Committee.

In the cross-examination, he denied that during the inquiry, he had admitted the commission of the theft. He also denied that his services were terminated as he had stolen the articles of the respondent and he has given a phoney statement.

9. Shri Murari Lal (PW2) supported the cause of the petitioner. Ex. PW2/A is the affidavit furnished by him in terms of Order 18 Rule 4 CPC.

In the cross-examination, he denied that three-four theft cases were pending against the petitioner and an inquiry was conducted against him. He denied that the services of the petitioner were retrenched as he was involved in the theft(s).

10. Conversely, Shri Roop Dev, Pradhan of the respondent Committee, testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that before the termination of the services of the petitioner, neither any notice was given to him nor the retrenchment compensation was paid. No report regarding the theft was lodged with the police. The petitioner was called by the Committee when the District Languages Officer came for the inquiry. The petitioner had confessed the commission of the theft(s). He denied that the petitioner never admitted his guilt and the District

Languages Officer had actually come for holding an inquiry against the Mandir Committee for the embezzlement of the funds of the temple. He admitted that the petitioner had lodged a complaint against the Mandir Committee because of which the District Languages Officer and the SDM had visited the temple. Nowadays eight Chowkidars are working in the temple. After the disengagement of the services of the petitioner, seven new Chowkidars have been appointed.

11. RW2 is Shri Raj Kumar Saklani, District Languages Officer, Mandi. He simply brought the record and stated that in obedience to the orders of SDM, Mandi, he went to the spot on 30.3.2008 and conducted an inquiry. Ex. RW2/A is the copy of his report. Such report was forwarded by him to the SDM.

In the cross-examination, he admitted that the petitioner had filed a complaint against the Mandir Committee to the effect that they misappropriate the temple funds and offerings. Some of the receipt books were found forged. The petitioner and others had told him that the false receipt books were got printed by the Pradhan of the Mandir Committee and others. On 20.4.2008, he (RW2) and the SDM called the general house and dissolved the old Mandir Committee. In its place new Committee was constituted. He denied that the services of the petitioner were disengaged by the respondent as he lodged a complaint against the Mandir Committee. Self stated, the Committee too, had preferred a complaint against the petitioner regarding the theft and the petitioner had admitted his fault in writing. The written apologies submitted by the petitioner are there in his record. The petitioner was serving as a Chowkidar. During his tenure, the offerings box of the temple was broken. He admitted that previously the petitioner alone was working as a Chowkidar. Now the Mandir Committee has employed six-seven Chowkidars. 12. Mark-X (subsequently exhibited as Ex. RW2/A) is the copy of the inquiry report dated 30.3.2008 given by RW2.

13. No reference has been received from the appropriate Government regarding the non-payment of the minimum wages to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be gone into by this Court being beyond the terms of the reference.

14. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily waged Chowkidar on 08.9.1998 and he served as such up-to 02.4.2007. The version of the petitioner is that on 03.4.2007, his services were wrongly and illegally terminated by the respondent. While denying the said fact, the respondent has pleaded that the petitioner was removed from service since during his tenure some cases of theft were traced out and he admitted his guilt.

15. The written apologies/confessions allegedly made by the petitioner are not there on the record. Even, there is nothing on the file to show that before the termination of the services of the petitioner, he was charge-sheeted and a domestic inquiry was conducted against him for the alleged misconduct. The evidence available on the file reveals that both the parties had leveled the allegations of theft and embezzlement etc. against each other. An inquiry was conducted by Shri Raj Kumar, Distt. Languages Officer (RW2), who submitted his report dated 30.3.2008 the copy of which is Ex.RW2/A. It has come in the statement of the RW2 that false receipt books were got prepared by the Pradhan etc. of the temple Committee.

16. As already mentioned, there is not even an iota of evidence on the record to show that before the termination of the services of the petitioner as a measure of punishment some inquiry as per the prescribed procedure was got conducted against him by the respondent. For this reason, the punishment imposed upon the petitioner by the respondent is patently wrong and illegal.

17. It is an admitted fact that the petitioner served as a daily waged Chowkidar continuously from the date of his engagement i.e. 08.9.1998 to 02.4.2007. This indicates that the petitioner had completed 240 days of work in each and every calendar year of his engagement. It has come in the statement of Shri Roop Dev (RW1) that before the termination of the services of

the petitioner, neither any notice was given to him nor the retrenchment compensation was paid. Thus, it can be easily said that the respondent has flouted the provisions of Section 25-F of the Act.

18. Not only this, from the depositions made by RWs 1 and 2, it can be gathered that after the retrenchment of the services of the petitioner new/fresh hands were engaged by the respondent. There is nothing on the record to prove that before engaging new/fresh hands an opportunity of re-employment was afforded to the petitioner by the respondent. This action of the respondent is in contravention of the provisions of Section 25-H of the Act. The termination of the services of the petitioner by the respondent is held to be wrong and illegal.

19. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For these reasons, he is not entitled to the back wages.

20. This issue is decided accordingly.

#### **Relief (Issue No. 2)**

21. As a sequel to my findings on the issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal termination i.e. 03.4.2007 except back wages. However, it is made clear that the respondent will be at liberty to initiate disciplinary proceedings against the petitioner for his alleged misconduct and take action against him as per law. Parties to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of January, 2013.

RAJAN GUPTA,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

#### **IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref: No. : 307/2012  
Date of Institution : 09-08-2012  
Date of Decision : 24-01-2013**

Sh. Ujagar Singh s/o Sh. Gurdas Ram, r/o Village Jitpur Baheri, P.O. Kadh, Tehsil Amb, Distt. Una, H.P.

..Petitioner.

*Versus*

The Executive Engineer, I &amp; PH Division No. II, Una, Distt. Una, H.P.

..Respondent.

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Vikramjeet Sharma, Adv.

For the Respondent : Sh. Sanjeev Katoch, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Ujagar Singh s/o Sh. Gurdas Ram, r/o Village Jitpur Baheri, P.O. Kadh, Tehsil Amb, Distt. Una, H.P. by the Executive Engineer, IPH Division No. II, Una, Distt. Una w.e.f. 01-06-1997 without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, to what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged by the respondent as a daily waged beldar in the month of September, 1995. He worked as such in Sub-Division Bharwain, Tehsil Amb, Distt. Una (HP) up to 31-05-1997. He performed his duties sincerely and to the full satisfaction of his superiors. No complaint of any kind was received against him during the period of his employment. On 1st June, 1997, his services were terminated by the Assistant Engineer, I & PH Sub-Division, Bharwain (the subordinate of the respondent) by a verbal order without assigning any reason. Before the termination of his services, neither any notice was given nor the retrenchment compensation was paid. At the time of his retrenchment, the persons junior to him namely Sh. Dharam Pal s/o Sh. Babu Ram and Sh. Yudhbir Singh were retained in service by the respondent. The latter failed to adhere to the principle of ‘last come first go’. Not only this, after his (petitioner’s) disengagement, new persons namely Sh. Baldev Singh etc. were appointed by the respondent. He was not given any opportunity of reemployment. Aggrieved by the oral /verbal termination order passed by the respondent/department, he (petitioner) preferred an Original Application bearing No. 975/1997 before the erstwhile Hon’ble Himachal Pradesh Administrative Tribunal, Shimla, for the redressal of his grievances. Such application was dismissed by the Hon’ble Administrative Tribunal on 23-08-2005. While deciding the Original Application, it was held by the Tribunal that the same is not maintainable before it for want of jurisdiction. He (petitioner) was allowed by the Hon’ble Administrative Tribunal to approach the appropriate Court/forum within a period of one month from the date of receipt of the copy of the order. Thereafter, he preferred an application before this Court/Tribunal. That application was withdrawn by him on 22-09-2006. After the withdrawal of the application, a demand notice dated 28-09-2006 was served upon the respondent by him. The copy of the demand notice was forwarded to the Labour Inspector-cum-Conciliation Officer, Una, Distt. Una. The Conciliation Officer initiated the proceedings but the dispute could not be amicably settled. The Labour Inspector-cum-Conciliation Officer, Una, then referred the matter to the Commissioner, Labour and Employment, H.P. at Shimla. The Commissioner without taking into consideration the facts of the case refused to make the reference to this Court/Tribunal. Aggrieved by and dissatisfied with the action of the Commissioner (Labour and Employment), he (petitioner) preferred CWP No. 1095/2008 before the Hon’ble High Court of Himachal Pradesh, Shimla. The writ petition was decided by the Hon’ble High Court per judgment dated 26-03-2012. The Labour

Commissioner/Appropriate Government was directed to make a reference to this Court with in a period of four weeks from the date of the Judgment i.e. March 26, 2012. Accordingly, the industrial dispute was referred to this Court/Tribunal by the Labour Commissioner. The act and conduct of the respondent is malafide, illegal and unjustified. It is also violative of the various provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the applicant/petitioner has claimed the following relief(s) in this case:-

"the present application of the applicant may very kindly be allowed and the respondent department may please be directed to re-instate the services of the applicant from the date of his verbal termination/retrenchment and his services may also be counted from the date of his initial engagement as Beldar, by giving the benefit in seniority etc. and back wages alongwith 12 % interest from the date of his verbal termination may also be paid to the applicant accordingly. Any other relief which this Hon'ble Tribunal may feel just and proper in the facts and circumstances of this application may also be granted in favour of the applicant and against the respondent department, in the interest of natural justice."

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal and fundamental right of the applicant/complainant has been infringed. The petitioner has no cause of action. The claim petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar in the month of September, 1995 and he worked as such up to 31-05-1997 in Sub-Division Bharwain. However, it has been denied that the petitioner was a sincere worker and his services were retrenched w.e.f. 01-06-1997. Actually, the petitioner used to work intermittently as per his convenience. Work for the whole month of May, 1997 was provided to the petitioner. After working for 18 days, he absented w.e.f. 29-05-1997. After 29-5-1997, the petitioner never reported for duties and abandoned the job. It has not been disputed that the persons junior to the petitioner are working under him (respondent) or after the termination of the services of the petitioner, new/fresh hands have been engaged. It has been pleaded that the workmen whose names have been disclosed by the petitioner, worked in continuity with him (respondent). He (petitioner) is precluded from claiming the parity with Sh. Dharam Pal etc. since he voluntarily left the service. The principle of 'last come first go' has not been flouted. As the petitioner abandoned the job, he is not entitled to any protection under the Act. The petitioner is gainfully employed as an agriculturist. The petition is meritless. The petitioner is not entitled to any relief.

In these circumstances, the respondent prays that the petition in hand be rejected.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 02-11-2012, following issues were struck :

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 01-06-1997 is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form ? ..OPR.
3. Whether the petitioner has a cause of action? ..OPP.

4. Whether the petition is hit by the vice of delay and laches on the part of the petitioner as alleged. If so, its effect? ..OPR.

5. Relief.

6. I have heard the ld. counsel for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes  
 Issue No.2 : Not pressed  
 Issue No.3 : Yes  
 Issue No.4 : No  
 Relief : claim petition allowed in part vide operative portion of the Award.

#### REASONS FOR FINDINGS

##### **Issues No. 1 & 3.**

8. Being interlinked and to avoid the repetition, both these issues are taken up together for discussion and disposal.

9. The petitioner Sh. Ujaggar Singh stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he used to work as per his sweet will and mostly remained absent. Self stated, breaks were given to him by the respondent. He denied that he voluntarily left the service and is not entitled to claim any parity with Sh. Dharam Pal etc. He makes both the ends meet by doing the agricultural work. He denied that the instant industrial dispute has been raised by him at a belated stage and he is not entitled to the reemployment etc.

10. Conversely, Sh. Harinder Bhardwaj, Executive Engineer, I & PH Division, Una (respondent) testified as RW1. In his affidavit Ex. RW1/A filed in accordance with Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he stated that no notice was served upon the petitioner calling upon him to resume his duties after he left the same. Even, no departmental proceedings were initiated against the petitioner. He admitted that S/Sh. Dharam Pal and Yudhvir Singh are junior to the petitioner. Their services have already been regularized. Volunteered, they served the department continuously and did not leave the job like the petitioner. He (RW1) admitted that after 31-05-1997, new / fresh hands were employed. At the time of engaging new /fresh hands, a notice of reemployment was not given to the petitioner. He denied that the services of the petitioner have been terminated in a wrongful manner.

11. Exts. PW1/B to E are the copies of the various letters written by the office of the respondent to the petitioner regarding the date of engagement on daily wage basis of Sh. Baldev Singh etc. These letters were written by the respondent to the petitioner pursuant to the applications preferred by the latter under the Right to Information Act, 2005.

12. Ex.PW1/F is the copy of the Judgment dated 26-03-2012 rendered by the Hon'ble High Court of H.P. in CWP No.1095/2008 titled as Sh. Ujagar Singh –vs- State of Himachal

Pradesh and others. The date of retrenchment recorded in this Judgment as 31st December, 1996 was ordered to be read as 1st June, 1997(instead of 31st December, 1996) by the Hon'ble High Court of Himachal Pradesh vide order dated 15-01-2013 passed in CMP No. 208/2013 in CWP No.1095/2008.

13. Ex. RW1/B is the mandays chart relating to the petitioner.

14. Ex. RW1/C is the copy of the muster roll No. 213 w.e.f. 1-5-1997 to 31-05-1997 issued by the respondent. Its perusal discloses that the petitioner served for 18 days up-to 29-05-1997 and, thereafter, absented from his duties.

15. Exts. RW1/D to K are the mandays charts of S/Sh. Dharam Pal, Yudhvir Singh, Baldev Singh, Kuldeep Singh, Madan Lal, Bachan Singh, Mohinder Singh and Malkiat Singh (all beldars), respectively.

16. Ex. RW1/L is the copy of the muster roll No. 284 issued by the respondent from 01-06-1997 to 30-06-1997.

17. No reference has been received from the appropriate Government regarding providing the artificial/fictional breaks to the petitioner by the respondent. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court being beyond the terms of the reference.

18. It is the admitted case of the respondent that the services of the petitioner were engaged as a daily waged beldar in the month of September, 1995 and he worked intermittently as such up-to 31-05-1997. The version of the petitioner is that on 1st June, 1997, his services were wrongly and illegally dispensed with by the respondent by a verbal order. While denying the said fact, the respondent has pleaded that the petitioner used to work as per his sweet will and convenience. He abandoned the job of his own accord and free volition.

19. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It is there in the statement of the respondent (RW1) that no notice was given to the petitioner asking him to resume his duties after he allegedly left the same. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

20. The mandays chart Ex.RW1/B depicts that the petitioner did not complete 240 days of work in a block of 12 calendar months preceding the date of his termination i.e. 01-06-1997 as envisaged under Section 25-B of the Act. The provisions of Section 25-F of the Act are thus not attracted in this case.

21. From the deposition made by the respondent (RW1), it can be gathered that the persons junior to the petitioner namely S/Sh. Dharam Pal and Yudhvir Singh are working under him. Their services have also been regularized. Not only this, after the disengagement of the services of the petitioner, new/fresh hands were engaged by the respondent. At the time of engaging new/fresh hands, an opportunity of reemployment was not afforded to the petitioner by the respondent. That being so, it can be safely said that the respondent has failed to abide by the principle of 'last come first go'. His action contravenes the provisions of Sections 25-G and 25-H of the Act. The termination of the services of the petitioner by the respondent is illegal and unjustified. The petitioner has a cause of action. Needless to say that for deriving the benefit under Sections 25-G

and 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months preceding the date /month of his termination.

22. These issues are decided in favour of the petitioner and against the respondent.

### **Issue No. 2.**

23. Not pressed.

### **Issue No. 4**

24. In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

*“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.*

25. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting him the relief(s) claimed. The observations made by our Hon'ble High Court in Liaq Ram Versus State of H.P. & others, 2012 (2) Him. L.R. (FB) 580 (majority view) will also be advantageous on this aspect of the matter.

26. There is no whisper in the petition/statement of claim/demand that the petitioner is unemployed and is having no source of income from the date of the retrenchment of his services. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is common knowledge that a person like the petitioner will not sit at home during the period he is /was out of service. The petitioner (PW1) in his cross-examination admitted that he earns his livelihood by doing the work of agriculture. He (petitioner) has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For these reasons, he is not entitled to the back wages.

27. This issue is also decided in favour of the petitioner and against the respondent.

### **Relief (Issue No. 5)**

28. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner is set aside and quashed. The respondent is directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service from the date of his illegal retrenchment i.e. 01-06-1997 except back wages. The respondent is also directed to consider the case of the petitioner for the regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Govt. for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 24th day of January, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Industrial Tribunal-cum-*  
*Labour Court, Dharamshala, H.P.*

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 7/2011**

**Date of Institution : 26.2.2011**

**Date of Decision : 14.01.2013**

Shri Jobbar Singh s/o Shri Gurditta Ram, r/o Village Sanourth, Tehsil Fatehpur, Distt. Kangra, H.P.

*..Petitioner.*

*Versus*

1. The Managing Director, H.P. State Forest Corporation, Shimla, H.P.
2. The Divisional Manager, H.P. State Forest Corporation, Fatehpur, Distt. Kangra, H.P.

*..Respondents.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. A.K. Chaudhary, Adv.

For the Respondent(s) : Sh. V.K. Vashistha, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether verbal termination of the services of Sh. Jobbar Singh S/O Sh. Shri Gurditta Ram, daily wage depotwatcher by i) The Managing Director, H.P. State Forest Corporation, Shimla, H.P. ii) The Divisional Manager, H.P. State Forest Corporation, Fatehpur, Distt. Kangra w.e.f. 04.7.1997 without serving charge sheet, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named workman is entitled to?”

2. The case of the applicant/petitioner (as set out in the statement of claim/demand) is reproduced below verbatim for ready reference:-

“(1) That the applicant was appointed a Depot Watcher on 01.01.1986 in H.P. State Forest Corporation (Hereinafter referred to be a H.P.S.F.C.). Since the date of his initial appointment, he has discharged the duty of his post very honestly and diligently. He has never been given any break in service and has worked continuously and uninterruptedly. As per the policy followed by the corporation qua the regularization of daily rated Depot

Watcher. The applicant has also become eligible for regularization as a Depot Watcher; the posts are filled up by appointing daily wager Depot Watcher as regular Depot Watchers.

**IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

**Ref No. : 7/2011  
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Shri Jobbar Singh s/o Shri Gurditta Ram, r/o Village Sanourth, Tehsil Fatehpur, Distt. Kangra, H.P.

*..Petitioner.*

*Versus*

1. The Managing Director, H.P. State Forest Corporation, Shimla, H.P.

2. The Divisional Manager, H.P. State Forest Corporation, Fatehpur, Distt. Kangra, H.P.

*..Respondents.*

*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. A.K. Chaudhary, Adv.

For the Respondent(s) : Sh. V.K. Vashistha, Adv.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

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2. The case of the applicant/petitioner (as set out in the statement of claim/demand) is reproduced below verbatim for ready reference:-

“1. That the applicant was appointed a Depot Watcher on 01.01.1986 in H.P. State Forest Corporation (Hereinafter referred to be a H.P.S.F.C.). Since the date of his initial appointment, he has discharged the duty of his post very honestly and diligently. He has never been given any break in service and has worked continuously and uninterruptedly. As per the policy followed by the corporation qua the regularization of daily rated Depot Watcher. The applicant has also become eligible for regularization as a Depot Watcher; the posts are filled up by appointing daily wager Depot Watcher as regular Depot Watchers.

2. That the work of the applicant has always been found satisfactory and he has never been found lacking in discharge of his official duties. Nothing adverse has been conveyed to him in the last 11 years of service in the respondent Corporation.

3. That in 1993, the applicant was transferred to Bahdal in lot number 3 R 1997 Dehra. While discharging the duties of Depot Watcher, the applicant is supposed to work for eight hours in a day and is to look after the main Depot. In the instant case, the main depot was at Bahdal and he was responsible for watch and wards the main forest Depot at Bahdal.

4. That the Corporation had given the work of resin collection to one Sh. Nand Lal, a labour supply Mate. The laour supply Mate collects the resin which is to be deposited by the corporation in the forest. The Timber Watcher enters the receipts of resin in daily collection register. The labour supply mate is also responsible for carrying resin tin to the main depot and challans to this effect are issued by the concerned Timber Watcher. The Labour Supply Mate can carry the resin tin to the main depot after the said challans are issued.

5. That a theft of 50 Tins is reported to have taken place in the intervening night of 29.6.1997-30.6.1997 from the Forest Depot Bandhol. It is relevant to submit here that the applicant was on duty with the main depot at Bahdal. He is nothing to do with the Forest Depot Bandhol where the alleged theft took place. Since the 50 Tins were ultimately to be brought to the main Depot and that were never received there, the applicant did not join the Timber Watcher, Sh. Karnail Singh while reporting the matter to the police on 1.07.1997.

6. That a Truck bearing registration number PNB-2361 which is believed to have carried the stolen resin tins, was ordered to be stopped by the forest check post at Sansarpur Terrace but the truck did not stop. Consequently, the forest check post also lodged an FIR with the SHO Dehra on 1.7.1997. An investigation is being conducted by SHO Dehra also in the matter and no case of theft was found against the applicant, and no challans was put against the applicant in the court by the state as it is clear from the copy of judgment dated 17.08.2005 in criminal case no.17-II/99/98 titled as State of H.P. Vs Rajan Kumar and others passed by the Hon'ble JMIC (II) Dehra.

7. That the contractor, Sh. Nand Lal was arrested by the police. The Divisional Forest Officer, Dehra, recorded the statements of the labour of Sh. Nand Lal, labour supply mate, who had categorically stated that the 50 tins of resin were taken by the contractor in the above mentioned truck. The labour has further stated that none of the employee including the applicant was present at the forest depot when the theft was done.

8. That to the surprise, the applicant received a copy of order dated 5.7.1997 from Forest Corporation vide which the services of the applicant have been terminated by restoring the provisions of section 25F of the Industrial Disputes Act, 1947. The reasons given for the retrenchment are:

- (1) The news papers reports appearing in the Tribune on dated 4-7-1997 and Jansatta on 5-7-1997 according to which the applicant has connived in the theft of resin tins.
- (2) The preliminary reports submitted by the Assistant Manager, Fatehpur has found the applicant involved in theft.

9. That no inquiry was conducted by the respondent nor the applicant was associated with the preliminary report stated to have been submitted by the Assistant Manager. Needless to state that neither the news reports nor the preliminary enquiry can be made the basis for retrenchment of the applicant, particularly when he had worked continuously and uninterruptedly for the period of more than 11 years. Being aggrieved, the applicant respectfully assails the order dated 5.7.1997, inter alia, on the following grounds:-

- (a) That the order dated 5-7-1997 is illegal, unjust and contrary to law.
- (b) That one of the pre-requisites condition for retrenchment under section 25F of the Industrial Disputes Act, 1947 is that "One month notice in writing indicating the reason for retrenchment should be given to the workman". The reason given by the respondent has relied upon a news paper report, which by no search of imagination, can be made the basis of applicant's retrenchment.
- (c) That the preliminary enquiry stated to have been made by the Assistant manager was conducting without associating the applicant to such proceedings. The law is well settled that if any enquiry report is used against a workman or employee, such workman must be confronted with the contents of the report or he should be associated at the time of enquiry. None of these two requirements were fulfilled by the respondent who had relied upon the reports, the contents of which were not made available to the applicant.
- (d) That the mere fact that the respondents has completed the entire process of retrenchment within four days after the applicant reported the matter to the Assistant Manager and on the day the news appeared in the Jansatta, i.e. on 5-7-1997 is patently suggestive on the fact that no procedure has been followed before resorting to the retrenchment of the applicant.
- (e) That the applicant has worked in the respondent corporation for more than 11 years without any complaint qua his work. He is entitled to a reasonable opportunity of hearing and cannot be condemned unheard. In the instant case, he has been retrenched on the basis of newspaper report and some preliminary enquiry conducted behind his back. The respondents have violated the principles of natural justice. There is no conclusive finding of the Act and the law requires that any penal action is to be proceeded by the reasonable opportunity of hearing to be afforded to a workman likely to be effected.
- (f) That in the notice, it is alleged that the applicant took the work of carriage of resin from the forest depot with carelessness resulting in loss of fifty resin tins. In this context, it is relevant to submit here that the applicant is responsible only for the watch and ward of depot at Behdal and his duties do not include to the carriage of resin tins from the forest depot to the main depot. To this extent, the observations made in the impugned notice are baseless and deserves to be rejected.
- (g) That the police have already taken cognizance of the matter. The labour supply mate, Sh. Nand Lal was arrested by them. It is believed that the matter is being enquired into at the departmental level. The respondent corporation has tried to react in unholy haste after the read the newspaper reports on 4-7-1997 and 5-7-1997 which cannot be conclusive proof of any misconduct of the applicant.

(h) That the respondent corporation has also infringed the provisions of section 25F of the Industrial Disputes Act. So far as the principle of last come first go has not been followed. There are many persons junior to the applicant who are still in service. The reasons given for applicant's retrenchment are neither convincing nor based on any material. Such reasons cannot stand the test of law and consequently the retrenchment of the applicant cannot be justified and same is deserves to be quashed and set aside.

10. That the applicant has filed the OA before the Hon'ble Administrative Tribunal at Shimla vide OA number 1302/97 titled as Jabbar Singh son of Sh. Gurditta Ram Resident of Village Sanourath, Tehsil Fatehpur, Distt. Kangra (H.P.).

..Applicant.

*Versus*

1. H.P. State Forest Corporation through its Managing Director, Shimla, H.P.
2. The Divisional Manager, H.P. State Forest Corporation, Fatehpur, Distt. Kangra, HP. ..Respondents and the Hon'ble Administrative Tribunal have ordered on 13.12.2005 that there is no dispute in the subject matter in dispute is covered under the provision of Industrial Disputes Act; 1947. It is however certified that nothing contained in this order shall be construed as a bar to the applicant to seek appropriate relief before the appropriate forum.
11. That the act of the forest corporation is totally wrong and unfair able practice within the meaning of section 2(ra) of Industrial Disputes Act, 1947. The corporation has violated the principle of natural justice, and as such, the applicant is entitled for equal pay for equal work under the article 39 (d) Constitution of India.
12. That the applicant has already been completed more than 11 years of continuous service and has been completed more than 240 days in the each financial year/calendar year where as the applicant is entitled for regularization as per the Act. That during the period of the service the applicant has worked honestly, diligently and as per the directions of his superior passed to him time to time.

13. Relief Sought:-

That the applicant is entitled for the following relief:-

- (i) That the office order dated 5-7-1997 may kindly be quashed and set aside.
- (ii) That the Forest Corporation may kindly be directed to reengage the applicant in his old place and post.
- (iii) That the Forest Corporation again directed to regularizing the service of the applicant after completion of 8 years of service and paying the regular pay scale plus other consequential service benefits to the applicant.
- (iv) That any other relieves to which the applicant may be found entitled may also be granted to the applicant".

3. On notice, the respondents appeared. They filed joint reply controverting the averments made in the petition/statement of claim. Paras 1 to 12 of the reply reads thus:-

“1. Reply to para No.1:- That the contents of this para are the matter of record, hence need no comments. With regards to the filling up the posts of Depot Watchers, it is submitted that only those daily wager Depot Watchers were regularized on or after 31.12.1997 who had completed 10 years/8 years daily wages service with 240 days in each calendar year as per the Govt. policy for regularization. The services of the applicant stands already terminated at the time of implementation of the said Policy of the Govt. for regularization.

2. Reply to para No.2:- That the contents of para No.2 of the claim statement are totally wrong, false, incorrect and hence denied. The applicant had failed to discharge his duties as Depot Watcher. Due to his negligence, 50 RFTs of Lot No.3/R/97 from Bandole Forest Depot were stolen on 29.6.1997.

3. In reply to para No.3, it is submitted that the contents of this para are also wrong, false and hence, denied. The applicant was not only assigned the duty to watch and ward the depot but complete property of Lot No.3/R/97 and also assign help to the Timber watcher.

4. In reply to para No.4 of the claim petition, it is submitted that the contents of this para are admitted to the extent that Corporation had given work of resin collection to one Sh. Nand Lal LSM and labour supply mate collects the resin. Timber Watcher enter the same in daily collection register, issue challan to carry the same to the main depot. But it is submitted that Sh. Jabbar Singh, was assigned the duty of watch and ward the Corporation property as well as to assist Shri Karnail Singh, Timber watcher in Resin collection, carriage from forest to Road side depot and further transportation of Resin to R&T Factories of lot No.3/R/97.

5. In reply to para No.5, it is submitted that the contents of this para are wrong, incorrect and hence, denied. As stated above in para No.4, Shri Jabbar Singh was assigned duty to help lot incharge in lot work as well as of watch and ward the corporation property in Lot No.3/R/97. Thus, he was also equally responsible for any lapse in lot.

6. In reply to para No.6, it is submitted that since the contents of this para are a matter of record, therefore, need no comments.

7. In reply to para No.7, it is submitted that since it is a matter of record, therefore, the contents of this para also need no reply. But as per the statements of Assistant Manager Fatehpur and Block Officer, Dada Siba, the immediate controlling Officers of the applicant, recorded on dated 5.7.1997, Shri Jabbar Singh to be fully responsible for disobedience of orders of his superiors and also for the theft of 50 resin filled tins.

8. In reply to para No.8 of the statement of claim, it is submitted that since it is a matter of record therefore, the same requires no comments from the replying respondents.

9. In reply to para No.9 of the statement of claim, it is submitted that the applicant was working on daily wages so no CCS (CCA) Rules were applicable to him and it was not in the fitness of things to retain him in service. His retention might had imparted wrong message among public/staff.

10. That the para No.9 (a to d) need no comments.

(e) In reply to this sub para, it is submitted that there were appellate authorities available to the applicant but he has not exhausted the relevant remedies available to him. Therefore, the applicant had admitted his guilt, at that time.

(f) In reply to para (9) (f) it is submitted that the duty of the applicant was in Lot No.3/R Dhadoya alongwith Sh. Karnail Singh TW. Thus they both were responsible for extraction of Resin, its collection, carriage to road side and to R&T and Factory thereafter. Thus, his lapse may not be ruled out.

9(g) In reply to this sub para it is submitted that since the contents of this sub para are a matter of record, therefore, needs no comments from the replying respondents.

9(h) In reply to this sub para, it is submitted that the Inquiry conducted at that time revealed that the staff either remained negligent or connived in pilferage of those 50 RFTs. So, the action of the respondent-Corporation was correct.

10. That Para No. 10 of the claim petition calls for no reply.

11. In reply to this para, it is submitted that in an inquiry conducted at that time revealed that the staff either remained negligent or connived in pilferage of those 50 RFTs. Hence, the action was taken against the staff.

12. In reply to this para, it is submitted that the services of the applicant were terminated in a theft case, hence, no further benefits are entitled to him, in any manner, whatsoever”.

In these circumstances, the respondents pray that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Per order dated 20.01.2012, following issues were struck by my ld. Predecessor.

1. Whether the disengagement of the petitioner w.e.f. 04.7.1997 is violative of the provisions of Section 25-F and other provisions of the Industrial Disputes Act as alleged. If so to what relief the petitioner is entitled to? OPP

2. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No.1 : Yes

Relief : Claim petition allowed in part vide operative portion of the Award.

## REASONS FOR FINDINGS

### **Issue No. 1**

8. Shri Jobbar Singh (petitioner) stepped into the dock as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that as per the policy of the Government, on 30.12.1997 only those workmen are/were to be regularized who had completed 8-10 years of service with 240 days of work in each and every calendar year of their engagement. He also admitted that he did not fall in the category of the employees whose services were to be regularized. He admitted that during his tenure, 50 tins of resin belonging to lot No.3/R/97 were stolen. His duty was to guard the said lot. Self stated the tins were stolen from Sandabari, whereas, he was on duty in Central Depot, Bandhal. He was the incharge of lot No. 3/R/97. He denied that during the departmental inquiry, which was conducted on 05.7.1997, it surfaced that the theft had taken place due to his fault. He also denied that after the inquiry, the department had called for his explanation which he did not submit. Further, he denied that the Forest Corporation suffered loss due to his fault/negligence.

9. Conversely, Shri Jung Bahadur, Divisional Manager, H.P. Forest Corporation, Fatehpur, Distt. Kangra (respondent No.2) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply preferred by him.

In the cross-examination, he admitted that the petitioner was appointed as a Depot Watcher on 01.1.1986 and no complaint was received against him up-to 28.6.1997. He admitted that during the intervening night of 29/30 June, 1997, 50 tins of resin were stolen from Bandhol Depot. He denied that at the crucial time, the petitioner was on duty in Badal Depot. Self stated, the petitioner was required to look after both the depots. The distance between Bandhol and Badhal Depots is 3-4 kilometers. He (RW1) does not know that on 01.7.1997, an FIR relating to the theft was lodged by Shri Karnail Singh, Timber Watcher. He admitted that in the criminal case which was pending in the Court of the 1d. Judicial Magistrate, 1st Class at Dehra, the petitioner was not arrayed as an accused. The criminal case was decided by the 1d. Magistrate on 17.8.2005 and Shri Karnail Singh (Timber Watcher) was acquitted. He admitted that in obedience to the orders passed by this Court, Shri Karnail Singh has been reinstated in service. He denied that the services of the petitioner were retrenched on the basis of the newspaper reports dated 4th and 5th July, 1997. Volunteered, an inquiry was conducted. He denied that the services of the petitioner have been disengaged in a wrongful manner. He admitted that the petitioner served for 11 years and completed more than 240 days of work in each and every year of his engagement. He also admitted that the workmen, who were engaged after the termination of the services of the petitioner, have become regular. He even admitted that the services of the workmen, who were serving alongwith the petitioner have been regularized.

10. Mark-A is the copy of the Award dated 25.8.2010 rendered by this Court in Reference No.392/2008, titled as Shri Karnail Singh vs. The Divisional Manager, H.P. Forest Development Corporation, Fatehpur Division.

11. Mark-B is the copy of the order dated 13.12.2005 passed by the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal at Shimla in O.A. No. 1302/1997, tilted as Jabbar Singh vs. H.P. State Forest Corporation and another.

12. Mark-C is the copy of the order/notice under Section 25-F of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short) vide which the services of the petitioner were terminated w.e.f. 04.7.1997.

13. Mark-D is the copy of the judgment dated 17.8.2005 pronounced by the 1d. Judicial Magistrate Ist Class, Court No.2, Dehra in Criminal Case No.17-II/99/98, titled as State vs. Rajan Kumar and others.

14. Mark-E is the copy of the office order dated 22.4.1997 issued by the respondent No.2. It depicts that the lot from which the resin tins were stolen was in the charge of the petitioner.

15. Mark-F is the copy of a letter dated 18.5.2012 written by the respondent No.2 to the Director (North) H.P. State Forest Development Corporation Limited, Dharamshala.

16. It is the admitted case of the parties that the services of the petitioner were engaged as a Depot/Timber watcher on 01.1.1986 and he served the respondents/department regularly up-to 03.7.1997. It is also an admitted fact that the services of the petitioner were disengaged w.e.f. 04.7.1997 as a measure of punishment in accordance with the order/notice dated 05.7.1997 the copy of which is Mark-C.

17. The version of the respondent is that the services of the petitioner were terminated as he was involved in a theft of the resin tins which took place during the intervening night of 29/30 June, 1997. Admittedly, an FIR pertaining to the theft was registered in Police Station, Dehra. The matter was investigated by the police and the challan was presented in the Court. The involvement of Shri Jobbar Singh (petitioner) was not found in the theft by the police because of which, he was not arrayed as an accused. The other Timber Watcher namely Shri Karnail Singh was challaned by the police. He was, however, acquitted by the 1d. Magistrate per judgment dated 17.8.2005, the copy of which is Mark-D.

18. There is no denial of the fact that the services of Shri Karnail Singh were also disengaged by the respondents. He raised an industrial dispute vide Reference No.392/2008, which was decided in his favour on 25.8.2010. The services of Shri Karnail Singh have already been re-engaged by the respondents pursuant to the Award dated 25.8.2010 (Mark-A) passed by this Court.

19. There is nothing on the record to show that before the termination of the services of the petitioner by the respondents a domestic inquiry as per prescribed procedure was conducted against him. Therefore, the punishment imposed upon the petitioner by the respondents without following the due procedure is patently wrong and illegal.

20. Shri Jung Bahadur (RW1) in his cross-examination admitted that the services of the petitioner were engaged on 01.1.1986. He worked for more than 240 days in each and every calendar year of his engagement during 11 years of his employment. RW1 also admitted that the services of those workmen have already been regularized who were appointed after the termination of the services of the petitioner. There is nothing on the record to show that at the time of engaging new/fresh hands, an opportunity of re-employment was afforded to the petitioner by the respondents as envisaged under Section 25-H of the Act. The retrenchment of the services of the petitioner by the respondents is, thus, illegal and unjustified.

21. While deposing in the Court as PW1, the petitioner has given his age as 50 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he was not gainfully employed. For these reasons, he is not entitled to the back wages.

22. This issue is, accordingly, decided in favour of the petitioner and against the respondents.

### **Relief (Issue No. 2)**

23. As a sequel to my findings on issue No.1 above, the instant claim petition succeeds in part and the same is partly allowed. The termination of the services of the petitioner by the respondents per office order dated 05.7.1997 is set aside and quashed. The respondents are directed to reinstate the petitioner forthwith. He shall be entitled to the seniority and continuity in service

from the date of his illegal termination i.e. 04.7.1997 except back wages. The respondents are also directed to regularize the services of the petitioner in accordance with the policies framed by the State Government from time to time. Parties to bear their own costs.

24. The reference is answered in the aforesaid terms.

25. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

26. File after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of January, 2013.

RAJAN GUPTA,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

### लोक निर्माण विभाग

#### अधिसूचना

शिमला—2, 19 मार्च, 2013

**संख्या पी.बी.डब्ल्यू(बी)एफ(5)16/2012.—यतः** हिमाचल प्रदेश के राज्यपाल को यह प्रतीत होता है कि हिमाचल प्रदेश सरकार को सरकारी व्यय पर सार्वजनिक प्रयोजन हेतु नामत गांव बन्धूना, लोअरकोटी, उकली एवं पारसा, तहसील रोहडू, जिला शिमला में बाई पास महेन्दली से वखीरना सड़क के निर्माण हेतु भूमि अर्जित करनी अपेक्षित है, अतएव एतद्वारा यह अधिसूचित किया जाता है कि उक्त परिक्षेत्र में जैसा कि निम्न विवरणी में निर्दिष्ट किया गया है, उपरोक्त प्रयोजन के लिए भूमि का अर्जन अपेक्षित है।

2. यह अधिसूचना ऐसे सभी व्यक्तियों को, जो इससे सम्बन्धित हो सकते हैं, की जानकारी के लिए भू—अर्जन अधिनियम, 1894 की धारा, 4 के उपबन्धों के अन्तर्गत जारी की जाती है।

3. पूर्वोक्त धारा द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए राज्यपाल, हिमाचल प्रदेश इस समय इस उपक्रम में कार्यरत सभी अधिकारियों उनके कर्मचारियों और श्रमिकों को इलाके की किसी भी भूमि में प्रवेश करने और सर्वेक्षण करने तथा उस धारा द्वारा अपेक्षित अथवा अनुमतः अन्य सभी कार्यों को करने के लिए सहर्ष प्राधिकार देते हैं।

4. कोई भी हितबद्ध व्यक्ति जिसे उक्त परिक्षेत्र में कथित भूमि के अर्जन पर कोई आपत्ति हो तो वह इस अधिसूचना के प्रकाशित होने के 30 दिनों की अवधि के भीतर निम्नलिखित रूप से भू—अर्जन समाहर्ता (शिं0 क्षेत्र), लोक निर्माण विभाग विन्टर फिल्ड, शिमला के कार्यालय में किया जा सकता है।

#### विवरणी

जिला	तहसील	गांव	खसरा नम्बर	क्षेत्र(हेक्टर)
शिमला	रोहडू	बन्धूना	1996	0-03-23
			1890	0-01-32
			1898	0-02-05
			1894	0-03-88
			1885	0-01-85
			1891	0-07-21
			1878	0-04-82
			1883	0-02-39

			1886	0-02-88
			1879	0-08-55
			1880	0-08-56
			1901	0-08-67
			1856	0-01-48
			1877	0-02-96
			किता-14	1-59-85
शिमला	रोहडू	लोअरकोटी	92	0-20-75
			93	0-25-10
			94	0-16-65
			97	0-09-98
			99	0-06-23
			100	0-18-34
			101	0-20-52
			102	0-21-28
			104	0-33-35
			113	0-46-54
			113/1	0-24-45
			115	0-29-42
			किता-12	2-72-61
शिमला	रोहडू	उकली	20	9-01-94
			22	0-21-48
			23	0-29-67
			21	0-68-29
			7	4-85-04
			94	0-18-32
			27	0-67-64
			28	1-63-49
			30	0-47-07
			25	0-54-80
			26	1-54-52
			24	0-65-76
			29	0-00-70
			3	2-67-22
			4	2-34-64
			2	3-67-28
			किता-16	29-47-86
शिमला	रोहडू	पारसा	57	0-06-96
			132	0-09-23
			92	0-21-56
			153	0-05-29
			171	0-13-28
			91	0-11-49
			152	0-19-68
			149	0-15-53
			64	0-11-05
			150	0-03-19
			90	0-29-59
			66	0-26-88

67	0-1-05
76	0-24-93
119	0-51-90
139	0-12-48
122	0-43-45
138	0-31-38
91 / 1	0-10-60
52	0-18-73
54	0-16-16
55	0-11-39
56	0-01-02
किता-23	3-96-82

आदेश द्वारा,  
हस्ताक्षरित/-  
प्रधान सचिव(लोक निर्माण)।

### लोक निर्माण विभाग

शुद्धि पत्र

शिमला-2, 19 मार्च, 2012

**सं० पी०बी०डब्ल्य०(बी०)एफ(५)३६ / २०१०.**—इस विभाग द्वारा भू-अर्जन अधिनियम, 1894 की धारा 4 दिनांक 30-7-2010 एवं धारा 6 व 7 दिनांक 15-1-2011 के अन्तर्गत जारी की गई थी में गांव बाली चौकी, उप-तहसील बाली चौकी, जिला मण्डी, हिमाचल प्रदेश में दर्शाये गये सड़क का नाम "बाली चौकी-थाची सड़क पर पुल निर्माण" के स्थान पर "तीर्थन खड़ड पर बनने वाले भुईंका पुल निर्माण" शब्द पढ़ा जाए ।

आदेश द्वारा,  
हस्ताक्षरित/-  
प्रधान सचिव (लोक निर्माण)।

शुद्धि-पत्र

राजपत्र, हिमाचल प्रदेश, 4 जनवरी, 2013 / 14 पौष, 1934 के पृष्ठ 5746 में मुद्रित कॉलम संख्या 4 में Scale of Pay "₹ 910-20200+1900/- Grade Pay" के स्थान पर "₹ 5910-20200+1900/- Grade Pay" पढ़ा जाए ।

हस्ताक्षरित/-  
सहायक नियन्त्रक,  
मुद्रण एवं लेखन सामग्री विभाग,  
शिमला-5.